24/pt. 200-499/990

code of federal regulations

Housing and Urban Development

24

PARTS 200 TO 499

Revised as of April 1, 1990

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Housing and Urban Development

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PARTS 200 TO 499

Revised as of April 1, 1990

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AS OF APRIL 1, 1990

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, **24 CFR 200.1** *refers to title 24, part 200, section 1.*

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

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III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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MARTHA L. GIRARD,
Director,
Office of the Federal Register.

April 1, 1990.

THIS TITLE

Title 24—HOUSING AND URBAN DEVELOPMENT is composed of five volumes. These five volumes containing Parts 0–199, Parts 200–499, Parts 500–699, Parts 700–1699, and Part 1700 to End represent all the current regulations of the Department of Housing and Urban Development issued under this title of the CFR as of April 1, 1990.

Redesignation tables appear in the volumes containing Parts 200–499, Parts 500–699, Parts 700–1699, and Part 1700 to End.

For this volume, Kevin Harris was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole.

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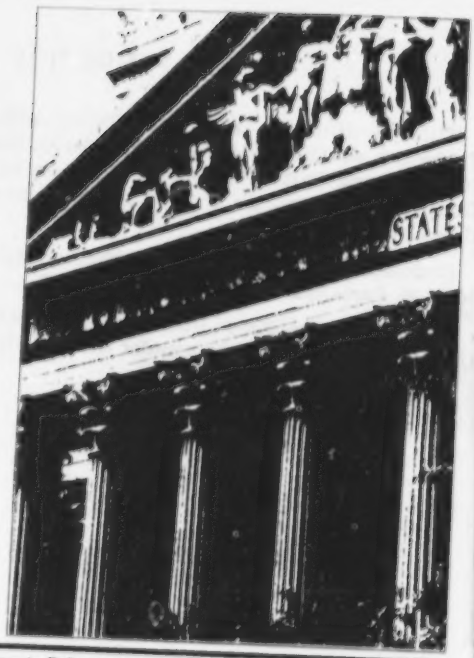

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Title 24—Housing and Urban Development

(This book contains Parts 200 to 499)

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APPENDIX A TO PART 200—STANDARDS INCORPORATED BY REFERENCE IN THE MINIMUM PROPERTY STANDARDS FOR MULTIFAMILY HOUSING (HUD 4910.1)

APPENDIX B TO PART 200—STANDARDS INCORPORATED BY REFERENCE IN THE MINIMUM PROPERTY STANDARDS FOR ONE AND TWO FAMILY DWELLINGS

AUTHORITY: Titles I, II, National Housing Act (12 U.S.C. 1701-1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subparts T and U are also issued under sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); subpart T is also issued under sec. 101, Houisng and Urban Development Act of 1965 (12 U.S.C. 1701s), and sec. 203, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-11).

SOURCE: 36 FR 24467, Dec. 22, 1971, unless otherwise noted.

Subpart A—Origin and Establishment

§ 200.1 Creation.

The Federal Housing Administration (frequently referred to herein as the FHA) was originally created by the National Housing Act, approved June 27, 1934 (48 Stat. 1246; 12 U.S.C. 1702). On November 9, 1965, by operation of the Department of Housing and Urban Development Act, approved September 9, 1965 (79 Stat. 667), the FHA was transferred to the Department of Housing and Urban Development.

§ 200.2 Status.

The Federal Housing Administration is an organizational unit within the Department of Housing and Urban Development.

§ 200.3 Purpose.

The Federal Housing Administration was established to encourage improvement in housing standards and conditions, to provide an adequate home financing system by insurance of housing mortgages and credit and to exert a stabilizing influence on the mortgages market.

§ 200.4 Meaning of term "Commissioner".

Effective January 18, 1966, the term "Commissioner," as used in this chapter, shall have the following meaning:

(a) Where the term appears in connection with the conveyance or assignment of real or personal property, it shall be deemed to refer to the Secretary of Housing and Urban Development.

(b) Where the term appears in connection with instances other than set forth in paragraph (a) of this section, it shall be deemed to refer to the Federal Housing Commissioner acting on behalf of the Secretary of Housing and Urban Development.

Subpart B—Functions and Programs

IN GENERAL

§ 200.5 Scope and nature of programs.

The Federal Housing Administration does not make loans or build housing but operates insurance programs under the provisions of the National Housing Act. The FHA provides insurance for private lenders against loss on mortgages financing homes, multifamily projects, land development projects, and group practice facilities projects and against loss on loans for property improvements. It also provides insurance of yields on investments in rental housing projects. All mortgage and loan transactions must be acceptable to the Commissioner. The various insurance programs are outlined in §§ 200.10 through 200.39, and more particularly described in other parts of this chapter.

§ 200.6 Application for lender approval.

An application for approval, as a mortgagee, as a loan correspondent or as a Title I lending institution is submitted on an appropriate form prescribed by the Commissioner. These forms may be obtained from any regional, area, or insuring office or from the Headquarters Office in Washington, D.C. When fully executed the form is submitted to the office having jurisdiction for transmittal to the Headquarters Office, Washington, D.C.

§ 200.7 Forms for mortgage and loan insurance.

Forms for filing applications for insurance or assistance under each of the various FHA mortgage and loan insurance programs are prescribed by the Secretary of HUD or the Secretary's designee. Forms used for application and appliaction processing may be printed by mortgagees or may be purchased from the Superintendent of Documents, U.S. Government Printing Office. When fully executed, forms are submitted to the HUD office having jurisdiction over the area where the property is located for which insurance or assistance is requested. In the case of those counties approved by HUD as lender option counties for Single Family Programs, applications may be submitted to the office having jurisdiction over the property or any office that is geographically closer to the property.

[51 FR 22802, June 23, 1986]

HOME MORTGAGE INSURANCE

§ 200.10 One- to four-family homes.

(a) The FHA insures mortgages on one- to four-family dwellings. The maximum mortgage cannot exceed the lesser of a dollar amount (which varies depending upon whether the residence is one-, two-, three- or four-family) and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) The basic home mortgage insurance program is authorized under Title II, section 203(b) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.11 Disaster damage to homes.

(a) The FHA insures mortgages given to finance the replacement of homes destroyed or extensively damaged by major disasters. The maximum mortgage shall be computed in accordance with 24 CFR 203.18(a)(1) (unless a higher maximum mortgage amount is authorized under 24 CFR 203.18b or 203.29), but the maximum mortgage amount cannot exceed the lesser of 100 percent of the appraised value of the property, or the cost of acquisition.

(b) This program is authorized under Title II, section 203(h) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

[36 FR 24467, Dec. 22, 1971, as amended at 48 FR 44067, Sept. 27, 1983]

§ 200.12 Suburban and farm homes.

(a) The FHA insures mortgages on single-family owner-occupied homes located in sparsely populated nonurban areas and farm areas. The land on which the house is located must be adjacent to a public highway. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) This program is authorized under Title II, section 203(i) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.13 Homes for servicemen.

(a) The FHA insures mortgages on single-family dwellings owned and occupied by servicemen on active duty with the Armed Forces or the Coast Guard. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. Certification by the Secretary of Defense (or the Secretary of Transportation for Coast Guard personnel) is required to the effect that the serviceman requires housing and that he is and has been for more than 2 years on active military duty.

(b) This program is authorized under Title II, section 222 of the National Housing Act and governed by regulations contained in Part 222 of this chapter.

§ 200.14 Homes for veterans.

(a) The FHA insures mortgages on single-family dwellings owned and occupied by veterans. To qualify as a veteran, the mortgagor must have served 90 days or more on active duty in the armed forces of the United States and have been discharged or released therefrom under conditions other than dishonorable. Extra hazardous duty for a period of less than 90 days will also qualify a mortgagor as a veteran. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. The program offers lower downpayment mortgage financing for the veteran than is available under the regular home mortgage insurance program described in § 200.10.

(b) This program is authorized under title II, sections 203 and 220 of the National Housing Act and title VIII, section 809 of such Act. The applicable regulations are contained in Parts 203, 220, and 226 of this chapter.

§ 200.15 Housing for civilian employees of the Armed Services, NASA, and NRC.

(a) The FHA insures mortgages covering purchases of one- to four-family homes by civilian employees of an Armed Services or National Aeronautics and Space Administration research and development installation and by civilian and military personnel employed or assigned to duty at a U.S. Nuclear Regulatory Commission research and development installation. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. Certification by the Secretary of Defense, the Administrator of the NASA or the Chairman of the NRC, as appropriate, is required regarding the status of the mortgagor as an employee at the installation (civilian employee or person on military duty), the mortgagor's need for housing, the general need for housing accommodations at the installation, and the permanency of the personnel assigned to the installation. The Secretary of Defense, the Administrator of the NASA or the Chairman of the NRC, as appropriate, may be required to guarantee the insured mortgages, if the Commissioner determines that the housing is not an acceptable risk.

(b) This program is authorized by section 809 of the National Housing Act and governed by the regulations contained in Part 226 of this chapter.

[36 FR 24467, Dec. 22, 1971, as amended at 47 FR 20113, May 11, 1982]

§ 200.19 Other home mortgage assistance.

The FHA offers other types of home mortgage insurance assistance in connection with programs under other titles of the National Housing Act as indicated by §§ 200.25, 200.26, 200.30, and 200.32 through 200.35 of this subpart.

PROJECT MORTGAGE INSURANCE

§ 200.20 Rental projects.

(a) The FHA insures mortgages, including advances made during construction, on rental projects of eight or more units developed either by a private or public mortgagor. The statute prescribes a maximum mortgage determined by a dollar amount, an amount computed under a formula based on the ratio the loan bears to the appraised value of the property, and a varying amount depending upon the number of bedrooms in each dwelling unit.

(b) The basic rental housing project mortgage insurance program is authorized under section 207 of the National Housing Act. The regulations governing this activity are contained in Part 207 of this chapter.

§ 200.21 Housing for the elderly.

(a) The FHA insures mortgages, including advances made during construction, on housing projects for the elderly developed by a private, profit-making mortgagor or a nonprofit organization, a Federal or State instrumentality, a municipal corporation, or a nonprofit development or housing corporation. Preference for occupancy in such projects is required for elderly persons 62 years of age or over and for the physically handicapped. The statute prescribes a maximum mortgage determined by a dollar amount, an amount computed under a formula based on a ratio the loan bears to the replacement cost of the property, and a varying amount depending upon the number of bedrooms in each dwelling unit.

(b) This program is authorized under section 231 of the National Housing Act and governed by the regulations contained in Part 231 of this chapter.

§ 200.22 Nursing homes.

(a) The FHA insures mortgages, including advances made during construction, on nursing homes either of the proprietary or nonprofit type. The statute prescribes a maximum mortgage determined by a dollar amount and an amount computed under a formula based on a ratio the loan bears to the estimated value of the property.

(b) This program is authorized under section 232 of the National Housing Act and governed by the regulations contained in Part 232 of this chapter.

§ 200.24 Investment insurance.

(a) In order to encourage investment in debt-free rental housing for families of moderate income the FHA insures the minimum amortization charge of 2 percent of the established investment (including all approved costs prior to initial occupancy) and a fixed annual return on the outstanding investment in an eligible project.

(b) This program is authorized under title VII of the National Housing Act and governed by Part 238 of this chapter.

§ 200.25 Armed services housing—impacted areas.

(a) The FHA insures mortgages on rental and sales housing projects developed for military personnel and essential civilian employees of the armed services or Coast Guard, employees of contractors for the armed services or Coast Guard, and essential personnel employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration or the Energy Research and Development Administration or employees of a contractor of NASA or ERDA who are employed at a research or development installation. The statute prescribes a maximum mortgage determined by a dollar amount and an amount computed under formulas, which differ for the rental and sales projects, based on the ratio the loan bears to the appraised value of the property. In rental projects, there is an additional limitation based on the number of bedrooms in each dwelling unit. Provision is included for the insurance of the mortgages financing the purchase of the individual dwelling units in a sales project.

(b) This program is authorized under title VIII, section 810 of the National Housing Act and governed by regulations contained in Part 227 of this chapter.

[36 FR 24467, Dec. 22, 1971, as amended at 43 FR 13511, Mar. 31, 1978]

§ 200.26 Condominium ownership.

(a) The FHA insures mortgages, including construction advances, on multifamily housing projects developed with the intention of converting, upon construction, to a plan of apartment ownership under which the family units in the project are sold to individual owners. In addition, insurance is provided for mortgages financing the purchase of the individually owned apartment units.

(b) The maximum mortgage is computed as follows:

(1) Multifamily housing project mortgages are limited to the lesser of a dollar amount, an amount computed under a statutory formula based on the ratio the loan bears to the replacement cost of the project, or an amount based on the number of bedrooms in each dwelling unit.

(2) Individual mortgages on the apartment units are limited to the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the apartment unit.

(c) This program is authorized under section 234 of the National Housing Act. The applicable regulations are contained in Part 234 of this chapter.

§ 200.27 Land development.

(a) The FHA insures mortgages for land development in connection with subdivisions and new communities. This authorization is designed to assist private enterprise by enabling private developers to purchase raw land and develop it to provide a steady supply of improved building sites in an orderly and economical manner. The type of improvements to be installed by the developer and which may be financed with the mortgage proceeds includes installations for water lines, water supply, sewage disposal; for complete water or sewerage systems; roads, streets, curbs, gutters, sidewalks, and storm drains. The total outstanding principal of mortgages, involving a single land development undertaking, shall at no time exceed a dollar amount prescribed by statute. The statute further prescribes a maximum mortgage determined by the ratio the loan bears either to the value of the property after completion of the land development or the value before proposed development plus the cost of

such development. The mortgage has a fixed maturity which may be extended where the financing of a water or sewerage system or of a new community is involved.

(b) This program is authorized under title X of the National Housing Act and governed by regulations contained in Part 205 of this chapter.

§ 200.28 Group practice facilities.

(a) The FHA insures mortgages to make credit available on reasonable terms to finance construction and equipment of medical, dental and optometric group practice facilities. The sponsoring group or organization may be either profit motivated or nonprofit, but the mortgagor entity must be nonprofit. It may operate the proposed facility or lease it to a professional group, either profit or nonprofit. The professional group, of not less than five physicians or not less than three dentists and optometrists, all on a full-time schedule, shall have the intention and capability of providing preventive and diagnostic treatment services of a comprehensive nature under a coordinated program with payment for such services on either a prepayment or fee-for-service basis. The 25-year mortgage shall not exceed the lesser of a dollar amount or an amount computed under a statutory formula based on a ratio the loan bears to the estimated value of the property, including equipment.

(b) The program is authorized under title XI of the National Housing Act and governed by regulations contained in Part 244 of this chapter.

§ 200.29 Other project mortgage assistance.

The FHA offers other types of project mortgage insurance in connection with programs under other titles of the National Housing Act as indicated by §§ 200.30 through 200.35 of this subpart.

Cooperative Housing Insurance

§ 200.30 Cooperative projects.

(a) The FHA insures mortgages, including construction advances, on cooperative housing projects. The mortgagor may be a nonprofit cooperative ownership housing corporation or trust, the permanent occupancy of the dwellings being restricted to members of the corporation or beneficiaries of the trust (management type project), or a nonprofit corporation or trust organized for the purpose of building homes for members (sales type project) or a corporate investor that certifies to the FHA its intention of selling the project to a cooperative group within 2 years after completion (investor-sponsor project). In addition, the FHA insures supplementary cooperative loans to a nonprofit cooperative project for improvements or repairs to property which is already covered by an FHA-insured project mortgage or for community facilities necessary to serve the occupants of such projects or to finance cooperative purchases and resales of membership.

(b) The maximum mortgage on project type housing cannot exceed the lesser of a dollar amount or an amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property. In the case of sales type projects, provision is made for the release of the individual properties from the blanket project mortgage, and the insurance of the individual mortgage covering the individual dwelling with the principal amount limited to the unpaid balance of the blanket mortgage allocable to the individual property as of the date of the release. In the case of a supplementary cooperative loan, the loan is basically limited to an amount which when added to the outstanding mortgage indebtedness creates a total indebtedness which does not exceed the original principal obligation of the mortgage. The total indebtedness created by the supplementary cooperative loan may exceed the original principal obligation where improvements or additional community facilities are involved, provided such total does not exceed the mortgage amount, which would be eligible for insurance if the original mortgage were to be replaced with a new insured mortgage refinancing the existing indebtedness and financing the improvements.

(c) This program is authorized under Title II, section 213 of the National

Housing Act and governed by regulations contained in Part 213 of this chapter.

TRAILER COURTS AND PARKS INSURANCE

§ 200.31 Sites and facilities for manufactured homes.

(a) The FHA insures mortgages on trailer courts and parks. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the estimated value of the property after the improvements are completed. The insurance applies to mortgages on sites and facilities but not on the trailers themselves. The court or park must have at least fifty spaces on one site designed for rental use for trailers or manufactured homes and must meet minimum requirements designed to improve the living conditions of the occupants.

(b) This program is authorized under Title II, section 207 of the National Housing Act and governed by regulations contained in Part 207 of this chapter.

[36 FR 24467, Dec. 22, 1971, as amended at 50 FR 9268, Mar. 7, 1985]

URBAN RENEWAL INSURANCE

§ 200.32 Residential rehabilitation.

(a) In urban renewal areas, the FHA insures mortgages on dwellings designed principally for residential use by not more than 11 families and on multifamily rental projects. The mortgages may be for financing the rehabilitation of existing salvable housing (including the refinancing or existing indebtedness) or for the replacement of slums with new housing. Insurance on multifamily project mortgages may include coverage of construction advances.

(b) The determination of maximum mortgage is governed by the following:

(1) On a 1- to 11-family dwelling the mortgage is limited to the lesser of a dollar limitation, governed by the number of residences in the dwelling, or a ratio of loan to the estimated replacement cost established under a statutory formula. Where rehabilitation is involved, an additional adjustment in the maximum mortgage is made on the basis of the estimated cost of rehabilitation and the estimated value of the property prior to rehabilitation. Where refinancing is involved, a further adjustment is made on the basis of the amount required to pay off the outstanding indebtedness.

(2) On a multifamily project, the mortgage is limited to the lesser of:

(i) A dollar amount.

(ii) An amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property with an additional adjustment made where the project involves rehabilitation and/or refinancing. Where rehabilitation is involved, the mortgage is adjusted on the basis of the estimated cost of rehabilitation and the estimated value of the property prior to rehabilitation. Where refinancing is involved, a further adjustment is made on the basis of the amount required to pay off the outstanding indebtedness.

(iii) An amount based on the number of bedrooms in each dwelling unit.

(c) This program is authorized under Title II, section 220 of the National Housing Act and governed by regulations contained in Part 220 of this chapter.

LOW AND MODERATE INCOME HOUSING

§ 200.33 Low cost homes and moderate income projects.

(a) The FHA insures mortgages on low cost homes for low and moderate income families with special terms available to families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster. Also, mortgages are insured by the FHA, including construction advances, on projects for moderate income families involving profit, nonprofit, public, limited distribution and cooperative mortgagors. Projects must be located in a community which the Secretary of Housing and Urban Development has approved and certified to the FHA as having a workable program designed to eliminate slums and prevent the spread of urban blight. Projects meeting special

criteria may be insured at a below market interest rate. Eligibility for occupancy of a project financed with a below market interest rate mortgage is limited to families and elderly or handicapped individuals having an income below the income ceiling established by the Commissioner for the area in which the project is located.

(b) The maximum mortgage on a low cost home is limited to the lesser of the value of the property or a dollar amount which depends on whether a one-, two-, three- or four-family residence is involved. Where rehabilitation is involved, an additional adjustment in the maximum mortgage is made on the basis of the estimated cost of rehabilitation and the estimated value of the property prior to rehabilitation. The maximum mortgage on a multifamily project is limited to the lesser of:

(1) A dollar amount.

(2) An amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property with an additional adjustment made where the project involves rehabilitation. In such instances, the mortgage is limited to the estimated cost of rehabilitation plus the estimated value of the property prior to rehabilitation.

(3) An amount based on the number of bedrooms in each dwelling unit.

(c) This program is authorized under title II, section 221 of the National Housing Act and governed by regulations contained in Part 221 of this chapter.

Publicly Constructed Housing Insurance

§ 200.34 Miscellaneous type mortgages.

The FHA insures mortgages financing purchases of certain types of permanent housing sold by Federal and State Governments, including the first resale. This program is authorized under Title II, section 223 of the National Housing Act and governed by regulations set out in connection with each of the applicable insurance programs.

Experimental Housing Insurance

§ 200.35 Experimental housing.

(a) The FHA insures mortgages on home and multifamily properties that incorporate new or untried construction concepts aimed at reducing housing costs, raising living standards, quality, livability or durability, or improving neighborhood design. The program contemplates the utilization and testing of advanced technology in housing design, materials, or products so as to contribute to the foregoing objectives. Mortgages or improvement loans that meet the eligibility requirements for insurance under any of the various FHA title II home or project mortgage programs may be eligible for insurance under the experimental housing section of the Act, provided the proposed construction meets applicable eligibility and property standards for the section of the Act under which it is to be processed. The maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the estimated cost of replacing the property using comparable conventional design, materials and construction.

(b) This program is authorized under section 233 of the National Housing Act and governed by the regulations contained in Part 233 of this chapter.

Property Improvement Loan Insurance

§ 200.38 Title I improvement loans.

(a) The FHA insures financial institutions against loss on short term loans (5 to 7 years) made to finance alterations, repairs and improvements to existing structures and the building of small new structures for nonresidential use. To be eligible, the existing structures must have been completed at least 90 days prior to the loan application.

(b) This program is authorized under title I, section 2 of the National Housing Act and governed by regulations contained in Part 201 of this chapter.

§ 200.39 Other improvement loans.

(a) The FHA insures financial institutions against loss on long-term (20-year) loans made to finance the repair, restoration, rehabilitation, conversion, alteration, enlargement or remodeling of individual homes or multifamily structures. To be eligible, the structures must be not less than 10 years old, except where the loan is to be used for major structural improvements or to correct defects not known at the time of completion of the structure or where the structure has been damaged by fire, flood, windstorm, or other casualty. The loans may also be used by a borrower to pay municipal assessments for public improvements adjacent to or in the vicinity of the borrower's property. The loan amount is basically limited to the estimated cost of the improvements or a dollar maximum amount per family unit. There is an additional limitation on the loan amount based on the lesser of the following:

(1) The amount of the improvement loan added to the outstanding indebtedness.

(2) The maximum insurable loan for refinancing the existing indebtedness and financing the cost of improvements.

(b) This program is authorized under title II, sections 203(k) and 220(h) of the National Housing Act and governed by regulations contained in Parts 203 and 220 of this chapter.

Subpart C—Organization and Management

§ 200.40 Commissioner.

The Federal Housing Administration is headed by a Commissioner who is an Assistant Secretary in the Department of Housing and Urban Development and who has been designated by the Secretary to serve as Assistant Secretary for Housing.

[36 FR 24467, Dec. 22, 1971, as amended at 39 FR 34655, Sept. 27, 1974; 49 FR 6714, Feb. 23, 1984]

§ 200.41 Administrative staff.

The principal administrative staff of the Assistant Secretary for Housing—Federal Housing Commissioner includes the Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, the Executive Assistant Commissioner, and Directors of various HPMC–FHA offices whose respective duties and areas of authority are indicated by their titles.

[39 FR 34655, Sept. 27, 1974, as amended at 49 FR 6714, Feb. 23, 1984]

§ 200.42 Principal divisions.

Various Divisions have been established in the Headquarters office at Washington, D.C. which are altered as programs, authority and duties are changed from time to time.

§ 200.43 Assistant Regional Administrators for Housing Production and Mortgage Credit.

The territory served by the Federal Housing Administration is divided into geographical regions composed in each instance of a Regional Office and a group of associated Area and/or Insuring Offices as established by the Department of Housing and Urban Development. Within each Region an Assistant Regional Administrator for Housing Production and Mortgage Credit (HPMC) directs and evaluates, on behalf of the Regional Administrator, all HPMC–FHA functions and responsibilities falling within his jurisdiction.

[39 FR 34656, Sept. 27, 1974]

§ 200.44 Area and/or Insuring Office Directors.

Each of the Area or Insuring Offices within a region is managed and supervised by a Director who is responsible to the Regional Administrator for the administration, within a defined geographic area, of all HPMC–FHA functions and responsibilities including the administration of various service offices or valuation stations established within his defined geographical area. Each such Director is empowered to exercise any and all authorities delegated to any subordinate.

[39 FR 34656, Sept. 27, 1974]

Subpart D—Delegations to Particular Positions

DELEGATIONS TO PARTICULAR POSITIONS

§ 200.50 Authority for delegations.

(a) Section 5(a) of the Department of Housing and Urban Development Act (79 Stat. 667) transferred to and vested in the Secretary all of the functions, powers, and duties of the Federal Housing Commissioner and the Federal Housing Administration which existed prior to November 9, 1965.

(b) Section 1 of title I of the National Housing Act, the authority under which the Commissioner and the Federal Housing Administration operated prior to November 9, 1965, provides in part as follows:

> * * * In order to carry out the provisions of this title and titles II, III, VI, VII, VIII, IX, and X, the Commissioner may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, * * *. The Commissioner may delegate any of the functions and powers conferred upon him under this title and titles II, III, VI, VII, VIII, IX, and X to such officers, agents and employees as he may designate or appoint * * *.

(c) Section 7(d) of the Department of Housing and Urban Development Act (79 Stat. 667) provides in part as follows:

> The Secretary may delegate any of his functions, powers, and duties to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties * * *.

(d) Interim Order II effective January 18, 1966, (31 FR 815) provides in part as follows: The offices or positions and organizational units in the Department shall include, in addition to those otherwise prescribed:

Office or position	Respective organizational unit
Federal Housing Commissioner.	Federal Housing Administration

Each officer or employee appointed to, or designated to act in, the office or position listed immediately above, and each organizational unit so listed is hereby authorized to exercise the functions, powers, and duties vested in, or delegated or assigned to, the office or position or officer or employee or organizational unit having the same title immediately prior to the effective date of the Act, and to redelegate and authorize successive redelegations of such authority to the extent empowered under authority vested, delegated, or assigned immediately prior to the effective date of the Act. Authority delegated herein or redelegated hereunder shall be exercised in the name of the Secretary, except that authority delegated to the Federal Housing Commissioner or the Public Housing Commissioner may be exercised in the name of the Federal Housing Commissioner or the Federal Housing Administration, respectively, and any actions taken under this delegation or a redelegation hereunder by or in the name of the Federal Housing Commissioner, Federal Housing Administration, shall be deemed to be the action of the Secretary.

(e) Section 207 of the Appalachian Regional Development Act of 1965 authorizes the Secretary of Housing and Urban Development to make loans and grants, under such terms and conditions as he may prescribe, to nonprofit, limited dividend, or cooperative organizations, or to public bodies, for expenses of planning and of obtaining an insured mortgage for a housing construction or rehabilitation project, under section 221 or 236 of the National Housing Act, in any area of the Appalachian region determined by the Appalachian Regional Commission to have significant potential for future growth. The Assistant Secretary—Federal Housing Commissioner, is, by delegation of authority from the Secretary, authorized to execute the powers and functions vested in the Secretary by section 207 of the Appalachian Re-

gional Development Act of 1965, as amended, and is further authorized to redelegate to one or more employees under his jurisdiction any of the authority delegated by the Secretary and to authorize successive delegation thereof.

[36 FR 24467, Dec. 22, 1971, as amended at 39 FR 34656, Sept. 27, 1974]

§§ 200.51—200.84a [Reserved]

§ 200.84b Regional Administrators, Deputies and Assistants.

To the position of Regional Administrator, and to each of them; and to the position of Deputy Regional Administrator and to each of them under the general supervision of the Regional Administrator having jurisdiction; and to the position of Assistant Regional Administrator for Housing Production and Mortgage Credit, and to each of them under the general supervision of the Regional Administrator there is delegated the basic authority and function to direct and supervise within the geographical area under his jurisdiction all activities assigned at Headquarters to the Assistant Secretary for HPMC-FHA Commissioner.

[39 FR 34659, Sept. 27, 1974, as amended at 41 FR 29141, July 15, 1976]

Delegations to Committees

§ 200.85 Executive Board.

(a) *Members.* The committee called the Executive Board is composed of the following members: Assistant Secretary-Federal Housing Commissioner, Chairman; Deputy Assistant Secretary-Deputy Federal Housing Commissioner, Vice Chairman; Executive Assistant Commissioner; Director, Office of Policy and Program Analysis and Development; Director, Office of Management Systems; Director, Office of Underwriting Standards; Director, Office of Field Support; Director, Publicly Financed Housing Division and Director, Property Improvement and Manufactured Homes Division.

(b) *Functions.* The functions of the Executive Board are to consider and advise with respect to basic policy, plans and general program matters of Housing Production and Mortgage Credit and the Federal Housing Administration.

[39 FR 34659, Sept. 27, 1974, as amended at 50 FR 9268, Mar. 7, 1985]

§ 200.89 Substantial Compliance Committee.

(a) *Members.* The members of the Substantial Compliance Committee shall be appointed from time to time by the Secretary or the Assistant Secretary for Housing and notice of the composition of the membership shall be published in the Federal Register.

(b) *Functions.* The functions of the Substantial Compliance Committee are to waive compliance with regulations heretofore or hereafter prescribed with respect to the interest and maturity of, and the terms, conditions, and restrictions under which loans, advances of credit, and purchases may be insured under section 2 of Title I of the National Housing Act, if, in the judgment of the Committee, the enforcement of such regulations would impose an injustice upon an insured institution which has substantially complied with such regulations in good faith and has refunded or credited any excess charge made, and where such waiver does not involve an increase of the obligation of the Secretary beyond the obligation which would have been involved if the regulations had been fully complied with.

[47 FR 34376, Aug. 9, 1982]

§ 200.92 Structural Defects Committee.

(a) *Members.* The Structural Defects Committee is composed of the following members or their designees: Director, Office of Underwriting Standards, Chairman; Director, Single Family Underwriting Division; Director, Multifamily Underwriting Division; Director, Office of Field Support: Director, Office of Management Systems; including a representative of the Director, Mortgage Insurance Accounting (by agreement with the Assistant Secretary for Administration) and a representative of the Office of General Counsel and such other members as the Assistant Secretary-Federal Housing Commissioner may designate.

(b) *Functions.* The functions of the Structural Defects Committee are to

take appropriate action in exceptionally difficult or questionable cases relating to expenditures to correct or compensate for structural or other defects which seriously affect the use and livability of a house financed with an insured mortgage following established guidelines pursuant to section 518 of the National Housing Act. The Committee also acts in an advisory capacity in the establishment of guidelines for the processing by production personnel of claims under section 518 of the National Housing Act.

[39 FR 34660, Sept. 27, 1974]

§ 200.93 Multifamily Participation Review Committee.

(a) *Members.* (1) The Multifamily Participation Review Committee is composed of the following voting members or their designees: (i) The Director, Office of Management, the Director, Office of Insured Multifamily Housing Development, the Director, Office of Lender Activities and Land Sales Registration, the Director, Office of Elderly and Assisted Housing, the Director, Office of Multifamily Housing Management and the Director, Participation and Compliance Division represent the Assistant Secretary for Housing-Federal Housing Commissioner; and (ii) the Director, Office of Indian Housing and the Director, Office of Public Housing represent the Assistant Secretary for Public and Indian Housing. The Director, Office of Management, serves as Chairperson and votes only in cases of a tie.

(2) The Committee is composed of the following non-voting members: The General Counsel or his or her designee, who provides legal counsel, and the Participation Control Officer in the Office of Management. The Participation Control Officer is the Executive Secretary to the Committee and is empowered to issue and sign all notices, orders, letters and directives on behalf of the committee, to keep minutes, and to perform other duties assigned by the Chairperson or directed by the Committee.

(b) *Functions.* The Committee will act for the Assistant Secretary for Housing-Federal Housing Commissioner and for the Assistant Secretary for Public and Indian Housing to determine the acceptability of participants in multifamily proposals under Subpart H of this part.

[50 FR 37520, Sept. 16, 1985]

§ 200.94 Loan Assistance Committee.

(a) *Members.* The Loan Assistance Committee is composed of the following members, or their designees: the Director, Office of Multifamily Housing Development, Chairman; the Director, Office of Policy and Program Development; the Director, Office of Management; and (by agreement with the Assistant Secretary for Administration) the Director, Office of Financing and Accounting.

(b) *Functions.* The functions of the Loan Assistance Committee are the review and approval or disapproval of requests for cancellation or waiver of repayment, in whole or in part, of loans made under Section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended.

[44 FR 2384, Jan. 11, 1979]

Miscellaneous Delegations

§ 200.95 Insuring Office Directors, Deputy Directors, and Assistants to the Director.

To the position of Director in each HUD Insuring Office, and under his general supervision to the positions of Deputy Director and Assistant to the Director and to each of them there is delegated the following duties and functions:

(a) To execute regulatory agreements and to issue eligibility statements, letters of feasibility, site appraisal and market analysis letters (SAMA), and commitments for insurance and to execute insurance contracts pursuant to such commitments, including mortgage insurance certificates.

(b) To approve a change in amount, a change in term, extension of the date of commencement of construction, extension of the expiration date, or any other modification in the commitment for insurance or insurance contract.

(c) To approve or disapprove "Change Orders" during construction.

(d) To make the high cost determinations for the Federal National Mortgage Association prescribed in section 305(g) of the National Housing Act.

(e) To make contracts for mortgage assistance payments under sections 235 and interest reduction payments under section 236 of the National Housing Act and to approve change in amount, change in term, or any other modification in such contracts before the mortgage is approved.

(f) To approve permissible refunds of processing fees.

(g) To approve or disapprove for mortgage insurance, advances of mortgage money during construction and execute such instruments as may be necessary therewith.

(h) To exercise the authority of the Assistant Secretary-Federal Housing Commissioner, where required, in granting prior credit approval under the provisions of title I of the National Housing Act and regulations thereunder.

(i) To act for the Assistant Secretary-Federal Housing Commissioner in determining applicable mortgage limits for communities in the insuring office jurisdiction for all mortgage insurance programs for which the Assistant Secretary-Federal Housing Commissioner is authorized to increase basic mortgage limits provided by law where cost levels so require.

(j) To make reservations of contract authority for mortgage assistance payments under section 235 of the National Housing Act and to modify or cancel such reservations and obligations of contract authority.

(k) To approve loans under section 106 of the Housing and Urban Development Act of 1968 subject to availability of funds, and under section 207 of the Appalachian Regional Development Act of 1965, as amended, subject to the availability of funds and concurrence of the Appalachian Regional Commission and to approve waiver of interest on loans made to nonprofit organizations under the Appalachian Regional Development Act of 1965.

(l) To approve claims and to take appropriate action to contract for repairs or otherwise correct or compensate the owner in accordance with established guidelines pursuant to section 518 of the National Housing Act.

(m) To execute on behalf of the Federal Housing Administration the reimbursement agreement pursuant to § 235.12 of this chapter.

(n) To have in addition to any other authority delegated to them, the same final authority delegated to their subordinates.

[39 FR 34660, Sept. 27, 1974, as amended at 41 FR 29141, July 15, 1976]

§ 200.95a Service Office Supervisors and Service Office Underwriters.

To the position of Service Office Supervisor in each HUD Service Office and under his general supervision to the position of Service Office Underwriter there is delegated the following basic authority and functions:

(a) To direct or perform home mortgage insurance functions up to and including the issuance of firm commitments within the geographic area under his jurisdiction.

(b) [Reserved]

[39 FR 34660, Sept. 27, 1974]

§ 200.98 Chief Underwriter and Deputy, Chief Mortgage Credit Examiner and Deputy, Chief Appraiser and Deputy, Commitment Appraiser, and Commitment Mortgage Credit Examiner.

To the positions of Chief Underwriter, Deputy Chief Underwriter, Chief Mortgage Credit Examiner, Deputy Chief Mortgage Credit Examiner, Chief Appraiser, Deputy Chief Appraiser, and to each of them, and with respect to the issuance of commitments to the positions of Commitment Appraiser and Commitment Mortgage Credit Examiner, and to each of them, there is delegated the following duties and functions:

(a) To issue commitments for insurance under any home mortgage insurance program and to approve modifications of such commitments for insurance.

(b) To make the high cost determinations for the Federal National Mortgage Association prescribed in section 305(g) of the National Housing Act.

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§ 200.98a Chief Underwriter and Deputy.

To the positions of Chief Underwriter and Deputy Chief Underwriter there is delegated the following duties and functions:

(a) To approve and issue feasibility letters, site appraisal and market analysis letters (SAMA), commitments for mortgage insurance and insure mortgages pursuant to mortgage insurance commitments on multifamily housing.

[39 FR 34661, Sept. 27, 1974]

§ 200.100 Closing Clerk.

To the position of Closing Clerk and to each of them there is delegated the duty and function to execute in the name of the Assistant Secretary-Commissioner, as authorized agent, mortgage insurance certificates under any home mortgage program and any other documents requiring the signature of the authorized agent incident to completion of the closing of the mortgage insurance transaction.

[36 FR 24467, Dec. 22, 1971, as amended at 39 FR 34661, Sept. 27, 1974]

§ 200.103 Deputy Assistant Secretary-Deputy Commissioner, Executive Assistant Commissioner, and Directors of HPMC Offices and Divisions.

To the positions designated above there is delegated the duty and function to certify that official long distance telephone calls made were necessary in the interest of the Government, pursuant to 31 U.S.C. 680a (section 4 of the Act approved May 10, 1939, 53 Stat. 738).

[39 FR 34661, Sept. 27, 1974]

§ 200.109 Regional Administrators, Deputy Regional Administrators and Assistant Regional Administrator for Housing Production and Mortgage Credit (Region VIII, Denver).

To the position of:

(a) Regional Administrators and Deputy Regional Administrators, and to each of them, there is delegated the following duties and functions:

(1) To allocate Below Market Interest Rate funds to eligible section 221(d)(3) projects and to make reservations of contract authority and to obligate contract authority for rent supplements and for interest reduction payments under section 236 of the National Housing Act and to modify or cancel such allocations and reservations.

(2) To approve or disapprove the eligibility of nonprofit sponsors and nonprofit mortgagors.

(3) To recommend to the Director, Office of Underwriting Standards (HPMC) approval of applications for financial assistance and approval of waiver of repayment of loans made under section 207 of the Appalachian Regional Development Act of 1965, as amended.

(4) To approve or disapprove, following initial endorsement, increases in project mortgage amounts recommended or referred by HUD Area or insuring Offices.

(5) To make reservations of funds and to approve or disapprove loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 and to make contracts and execute documents in connection therewith and, with respect to project applications for mortgage insurance under section 236 of the National Housing Act, to determine feasibility under section 236, issue commitments for mortgage insurance under section 236, insure such mortgages pursuant to such commitments, including approval of insured advances during construction, and in connection with section 202 loans to be converted to insured mortgages under section 236, to assign and deliver such mortgages to the permanent lender.

(6) To approve claims in excess of $2,000 under section 518 of the National Housing Act, to advise field offices on exceptionally complex cases referred to them, and to refer difficult or questionable cases to the Structural Defects Committee for action.

(7) To have in addition to any other authority delegated to them, the same final authority delegated to their subordinates.

(8) The duties and functions set forth in § 200.118.

(b) To the Assistant Regional Administrator for Housing Production and Mortgage Credit, Region VIII, Denver, there is delegated the duties and functions as set forth in § 200.118.

[39 FR 34661, Sept. 27, 1974, as amended at 42 FR 5044, Jan. 27, 1977]

§ 200.110 Chief, Valuation Branch or Head, Single-Family Valuation Section and Commitment Appraiser.

To the position of Chief, Valuation Branch or Head, Single-Family Valuation Section, in each HUD Area Office, and under his general supervision to the position of Commitment Appraiser, there is delegated the following basic authority and function: To approve conditional commitments to insure 1- to 4-family housing and Title X project mortgages.

[40 FR 6953, Feb. 18, 1975, as amended at 41 FR 29141, July 15, 1976]

§ 200.111 Chief, Mortgage Credit Branch or Head, Single-Family Mortgage Credit Section and Commitment Mortgage Credit Examiner.

To the position of Chief, Mortgage Credit Branch or Head, Single-Family Mortgage Credit Section, in each HUD Area Office, and under his general supervision to the position of Commitment Mortgage Credit Examiner, there is delegated the following basic authority and functions:

(a) To approve firm commitments for, and to make interest assistance payment contracts in conjunction with, the insuring of 1- to 4-family housing and Title X project mortgages.

(b) To grant prior credit approval under the provisions of title I of the National Housing Act and regulations thereunder.

[36 FR 24467, Dec. 22, 1971, as amended at 38 FR 2759, Jan. 30, 1973; 40 FR 6953, Feb. 18, 1975; 41 FR 29141, July 15, 1976]

§ 200.112 Chief, Mortgage Credit Branch or Head, Multifamily Mortgage Credit Section.

To the position of Chief, Mortgage Credit Branch or Head, Multifamily Mortgage Credit Section, in each HUD Area Office, there is delegated the following basic authority and functions:

(a) To approve financial requirements for closing and execute and approve effective date interest reduction payment contracts for multifamily housing programs.

(b) To approve requests for approval of advances under contracts for planning and land acquisition.

(c) With respect to housing assisted under the United States Housing Act of 1937, including amendments made by the Housing and Community Development Act of 1974, to approve requests for approval of advances of funds under preliminary loan contracts, to approve advances of funds and requisitions of funds for nonpermanently financed housing, and to approve determinations of minimum development cost.

[40 FR 6953, Feb. 18, 1975, as amended at 40 FR 39860, Aug. 29, 1975]

§ 200.113 Director/Chief Underwriter or Chief, Multifamily Branch.

To the position of Director/Chief Underwriter or Chief, Multifamily Branch, in each HUD Area Office, there is delegated the following basic authority and functions:

(a) To direct underwriting processing for the insurance of mortgages in other than 1- to 4-family housing and Title X projects and establish and administer related processing target dates and construction starting dates, to approve preliminary underwriting determinations and recommend their acceptance for the insurance of mortgages in programs other than 1- to 4-family housing and Title X projects, to approve related construction advances and change orders, and to perform the functions and exercise the authorities as set forth in § 200.112.

(b) To approve schematic documents, architect's fees, findings (statutory room cost), final plans and specifications, construction contract awards, memoranda of acceptance for occupancy, dates of full availability, part I of certificates of completion, preliminary loan requisitions, development loan requisitions, administrative loan requisitions, actual development cost certifications, and all preliminary technical determinations, all as related to the production of low-rent public housing.

(c) To approve construction contract awards, acceptance of final inspections, and acceptance of certificates in lieu of audit or audit reports, all as re-

lated to the production of college housing.

(d) To approve and issue feasibility letters, site appraisal and market analysis letters (SAMA), commitments for mortgage insurance and insure mortgages pursuant to mortgage insurance commitments on multifamily housing.

(e) To make reservations of rent supplement contract authority for section 236 projects.

[36 FR 24467, Dec. 22, 1971, as amended at 39 FR 34661, Sept. 27, 1974; 40 FR 6953, Feb. 18, 1975]

§ 200.114 Director/Chief Underwriter or Chief, Single-Family Branch and Deputy Director/Deputy Chief Underwriter.

To the position of Director/Chief Underwriter, in each HUD Area Office, and under his general supervision to the positions of Deputy Director/Deputy Chief Underwriter and Chief, Single-Family Branch, there is delegated the following basic authority and functions:

(a) The duties and functions as set forth in §§ 200.110 and 200.111.

(b) To establish and administer 1- to 4-family housing and Title X project mortgage insurance application processing target dates.

(c) To approve applications, subdivision reports, and construction changes related to the production of 1- to 4-family housing and Title X projects.

(d) To execute on behalf of the Federal Housing Administration the reimbursement agreement pursuant to § 235.12 of this chapter.

(e) To approve and issue feasibility letters, or subdivision reports in lieu thereof; to approve and issue commitments for mortgage insurance upon completion; and to insure mortgages pursuant to such commitments under section 234 of the National Housing Act, in cases involving one- to four-family structures or groups of such structures.

[36 FR 24467, Dec. 22, 1971, as amended at 39 FR 34661, Sept. 27, 1974; 40 FR 6953, Feb. 18, 1975]

§ 200.115 Director/Chief Underwriter or Chief, Multifamily Branch and Multifamily Housing Representative.

To the position of Director/Chief Underwriter or Chief, Multifamily Branch, in each HUD Area Office, and under his general supervision to the position of Multifamily Housing Representative, there is delegated the following basic authority and functions:

(a) To coordinate the participation in and support by those activities in the Area Office necessary to achieve required interprogram coordination in dealing with applications for:

(1) Mortgage insurance in programs other than 1- to 4-family housing and Title X projects, (2) housing assisted under the United States Housing Act of 1937, including amendments made by the Housing and Community Development Act of 1974, and (3) other subsidized housing projects.

(b) To approve findings of acceptability of proposals with respect to their completeness, compatibility with program policy, and, as applicable, the satisfaction of eligibility criteria.

[40 FR 6954, Feb. 18, 1975, as amended at 40 FR 39860, Aug. 29, 1975]

§ 200.116 Director/Chief Underwriter and Deputy Director/Deputy Chief Underwriter.

To the position of Director/Chief Underwriter, in each HUD Area Office, and under his general supervision to the position of Deputy Director/Deputy Chief Underwriter there is delegated the following basic authority and functions:

(a) To direct all activities essential to the insurance of mortgages, including the approval of determinations supporting feasibility letters, commitments and insurance endorsements, and the approval of cost certifications, eligibility statements, regulatory agreements, nonprofit sponsors and housing consultants, all as related to mortgages in programs other than 1- to 4-family housing and Title X projects; to establish and monitor adherence to related processing priorities and schedules, and to perform the functions and exercise the authorities set forth in §§ 200.113, 200.114, and 200.115.

(b) To approve preliminary loan contracts, site reports, development programs, Annual Contributions Contracts, and amendments thereto and related third-party contracts, turnkey housing proposals, preliminary contracts of sale, contracts of sale, agreements to lease, Housing Assistance Payments (HAP) Contracts, and Agreements to Enter into HAP Contracts, all as related to the production of housing assisted under the United States Housing Act of 1937, including amendments made by the Housing and Community Development Act of 1974.

(c) To approve loan or grant agreements, financing plans (grants), loan disbursements, final inspections, and certificates in lieu of audit or audit reports, all as related to the production of college housing.

(d) To approve, cancel, or modify the reservations of contract authority required for subsidy payments, and the allocations of funds for Below Market Interest Rate Loans, all as related to the insuring of 1- to 4-family and multifamily housing mortgages.

(e) To approve and issue feasibility letters, site appraisal and market analysis letters (SAMA), commitments for mortgage insurance and insure mortgages pursuant to mortgage insurance commitments on multi-family housing.

[36 FR 24467, Dec. 22, 1971, as amended at 38 FR 2759, Jan. 30, 1973; 39 FR 34661, Sept. 27, 1974; 40 FR 6954, Feb. 18, 1975; 40 FR 39860, Aug. 29, 1975; 41 FR 29141, July 15, 1976]

§ 200.118 Area Director and Deputy Area Director.

To the position of Area Director in each HUD Area Office and under his general supervision to the position of Deputy there is delegated the following basic authority and functions:

(a) To administer the activities of the Area Office for insuring mortgages within the assigned insuring jurisdiction, to administer the low-rent and other housing production activities of the Area Office, and to perform the functions and exercise the authorities set forth in §§ 200.116 and 200.117.

(b) To approve applications, feasibility letters, conditional commitments, firm commitments, initial and final endorsements for insurance pursuant to such commitments, project mortgage increases prior to or in conjunction with final endorsement, insurance fee refunds and adjustments pursuant to outstanding fiscal instructions, requests from sponsors for section 106 seed money loans or grants, and Appalachian 207 loans.

(c) To administer the housing production activities of the Area Office with respect to housing assisted under the United States Housing Act of 1937, including amendments made by the Housing and Community Development Act of 1974, including, but not limited to, the authority to approve proposals, (including proposals relating to projects financed under Section 202), applications for program reservations and preliminary loans, and ACC (Annual Contributions Contract) and/or HAP Contract (Housing Assistance Payments Contract) Lists and amendments thereto, to terminate or require the termination of ACC's and/or HAP Contracts, and to determine that there is no practical alternative to high-rise elevator projects for families with children, all as related to housing production.

(d) To approve reservations of funds for college housing.

(e) To assign and deliver mortgages to the permanent lender, in connection with section 202 loans to be converted to insured mortgages under section 236.

(f) To make reservations of funds and to approve or disapprove loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 and to make contracts and execute documents in connection therewith.

(f) To approve claims and to take appropriate action to contract for repairs or otherwise correct or compensate the owner in accordance with established guidelines pursuant to section 518 of the National Housing Act.

(g) To have in addition to any other authority delegated to them, the same final authority delegated to their subordinates.

[36 FR 24467, Dec. 22, 1971, as amended at 36 FR 25152, Dec. 29, 1971; 38 FR 2759, Jan. 30, 1973; 39 FR 34662, Sept. 27, 1974; 41 FR 10604, Mar. 12, 1976; 41 FR 29141, July 15, 1976; 42 FR 5044, Jan. 27, 1977]

§ 200.119 Designation of officials to perform certain functions with respect to the insurance of mortgages.

(a) *Specification of functions.* Each of the officials appointed to the positions set forth in paragraph (b) of this section is designated to act for the Area Director solely for the purpose of executing the following instruments essential to the approval of a mortgage for insurance:

(1) The regulatory agreement between the Secretary and the owner;

(2) The agreement and certification between the Secretary, mortgagor, and mortgagee;

(3) The rent supplement contract between the Secretary and the housing owner; and

(4) The endorsement of the note for mortgage insurance.

(b) *Officials designated.* The functions described in paragraph (a) of this section may be exercised by the officials appointed to the following positions:

(1) The Deputy Area Director.

(2) The Director/Chief Underwriter.

(3) The Deputy Director, Operations Division; and

(4) The Assistant to the Director, Operations Division.

[37 FR 7156, Apr. 11, 1972, as amended at 40 FR 6954, Feb. 18, 1975]

§ 200.128 Director and Deputy Director of the Insuring Offices.

To the position of Director, and under his general supervision to the position of Deputy Director, of each Insuring Office listed below, with respect to the production of housing units within the jurisdiction of the Insuring Office, there is redelegated the authority to perform the functions and exercise the authorities set forth in § 200.118 (c) and (e)(1).

Phoenix, AZ; Fresno, CA; Sacramento, CA; Santa Ana, CA; Denver, CO; Springfield, IL; Des Moines, IA; Topeka, KS; Shreveport, LA; Grand Rapids, MI; Helena, MT; Albuquerque, NM; Albany, NY; Cincinnati, OH; Cleveland, OH; Providence, RI; Memphis, TN; Houston, TX; Salt Lake City, UT; Spokane, WA; Charleston, WV.

[42 FR 5044, Jan. 27, 1977]

§ 200.129 Director, Housing Development Division, and Deputy Director, Housing Development Division, Insuring Offices.

To the position of Director, Housing Development Division (formerly Chief Underwriter), and under his general supervision to the position of Deputy Director, Housing Development Division (formerly Deputy Chief Underwriter), of each Insuring Office listed below, with respect to the production of housing units within the jurisdiction of the Insuring Office, there is redelegated the authority to perform the functions and exercise the authorities set forth in §§ 200.113, and 200.115 and 200.116 [41 FR 24755, June 18, 1976].

Phoenix, AZ; Sacramento, CA; Santa Ana, CA; Denver, CO; Springfield, IL; Des Moines, IA; Topeka, KS; Shreveport, LA; Grand Rapids, MI; Helena, MT; Albuquerque, NM; Albany, NY; Cincinnati, OH; Cleveland, OH; Providence, RI; Memphis, TN; Houston, TX; Salt Lake City, UT; Spokane, WA; Charleston, WV.

[41 FR 52450, Nov. 30, 1976]

Subpart E—Mortgage Insurance Procedures and Processing

§ 200.140 Scope of subpart.

This subpart is confined to general procedures and processing covering mortgage insurance irrespective of the particular program involved. More specific information regarding procedures and processing, including variances under the several titles and sections of the National Housing Act, are treated in other provisions of this chapter.

§ 200.141 Procedure in general.

(a) All mortgage insurance programs, with the exception of the single family Direct Endorsement and coinsurance programs, involve four steps. First, application for insurance; second, commitment for insurance; third, insurance endorsement; and fourth, where applicable, a claim for loss.

(b) Except as set forth in §§ 200.163(b) and 200.164(g), commitments are not issued by HUD under the single family Direct Endorsement program.

[48 FR 11936, Mar. 22, 1983]

APPLICATION FOR INSURANCE

§ 200.142 Form and filing.

Any financial institution approved by the Commissioner as a mortgagee may apply for mortgage insurance. Application forms prescribed by the Secretary or his designee may be printed by the institution or may be purchased from the Superintendent of Documents, U.S. Government Printing Office. When fully executed, forms are submitted to the HUD office having jurisdiction over the area where the property is located for which insurance is requested. In the case of those counties approved by HUD as lender option counties for Single Family Programs, applications may be submitted to the office having jurisdiction over the property or any office that is geographically closer to the property.

[51 FR 22802, June 23, 1986]

§ 200.143 Purpose and content.

Every application, whether for insurance of a home type or project type mortgage, sets forth the required information to enable FHA to determine eligibility under a particular program. The eligibility consideration covers three general areas as follows:

(a) The eligibility of the proposed loan under the statute, i.e., term, interest rate, mortgage amount, and ratios of loan to value or replacement cost.

(b) The eligibility of the property with respect to compliance with FHA statutory and regulatory requirements.

(c)(1) The eligibility of the mortgagor with regard to the mortgagor's ability to carry and pay the proposed mortgage debt.

(2) Applications are designed to meet the requisites of the several programs. Accordingly, the applications will call for certain supplemental information, such as drawings and specifications, financial statements, exhibits and other information appropriate to enable the FHA to make the necessary determinations concerning eligibility.

§ 200.144 Fees.

Each application must be accompanied by a fee for examination in an amount in effect on the date the application is filed as indicated by the regulations covering the particular insurance program.

§ 200.145 Technical analysis, underwriting processing and inspections

(a) When an application for mortgage insurance is received in the Field Office it is recorded and a receipt issued therefor. The proposed transaction is then analyzed to determine whether the application and supporting information is in proper form for underwriting processing.

(b) Underwriting processing involves consideration of the elements having to do with eligibility for insurance including review of the planning, construction, and specifications, cost estimation and valuation, and credit analysis. The findings are included in a report and recommendation which is the basis for the commitment. Except as set forth in §§ 200.163(b) and 200.164(g) commitments are not issued by HUD under the single family program of Direct Endorsement.

(c)(1) As part of its underwriting processing for single and multifamily mortgage insurance programs, HUD may require an appraisal and inspection of the property covered by the mortgage. These appraisals and inspections are performed to determine the maximum insurable mortgage amount and to protect the Government and its insurance funds. Appraisals and inspections neither create nor imply a duty or obligation from HUD to the mortgagor or to any other party, and are not to be regarded as a warranty by HUD to the mortgagor, or to any other party, of the value or condition of the property. The mortgagor is responsible for making those investigations and inspections it deems necessary for protecting its interests in the property.

(2) In connection with the insurance of mortgages covering single family homes, HUD requires the seller or builder, or such other person as HUD may designate, to deliver to the purchaser before the sale a written state-

ment of appraised value. This estimate of value is used by HUD in determining the maximum mortgage amount it will insure. The written statement of appraised value is not to be regarded as a warranty by HUD to the mortgagor or any other party as to the value or condition of the property. The purchaser must satisfy himself or herself that the price of the property is reasonable and that its condition is acceptable.

[36 FR 24467, Dec. 22, 1971, as amended at 48 FR 11936, Mar. 22, 1983; 54 FR 19887, May 9, 1989]

§ 200.146 Acceptance, rejection and reconsideration.

(a) If an application for mortgage insurance meets the eligibility requirements, a commitment for insurance is issued. Except as set forth in §§ 200.163(b) and 200.164(g) commitments are not issued by HUD under the single family program of Direct Endorsement. Under this program the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163 and, if the documents are acceptable, the mortgage is endorsed.

(b) If the application for mortgage insurance is not eligible for processing or does not qualify, this fact is reported to the applicant together with the reason for the rejection.

(c) A rejected application for mortgage insurance may be reconsidered upon written request to the Field Office which rejected the application.

[36 FR 24467, Dec. 22, 1971, as amended at 48 FR 11937, Mar. 22, 1983]

COMMITMENT FOR INSURANCE

§ 200.147 Issuance of commitment.

After a determination that the mortgagor and the property offered for security meet the standards and requirements as to eligibility, a commitment is prepared at the request of the mortgagee and forwarded over the signature of the Authorized Agent to the approved mortgagee setting forth the terms and conditions under which the mortgage transaction will be insured. The commitment is a binding contract between HUD and the mortgagee presenting the application. Except as set forth in §§ 200.163(b) and 200.164(g) commitments are not issued by HUD under the single family Direct Endorsement program.

[48 FR 11937, Mar. 22, 1983]

§ 200.148 Types of commitments.

(a) *Home mortgages.* In connection with home mortgages the commitment issued may be conditional or firm.

(1) *Conditional commitment.* A conditional commitment is requested in a case where the mortgagor is unknown and therefore cannot be specified in the application. The Commissioner agrees to insure a mortgage on specified property in an amount and under the terms specified, provided the property is sold to a purchaser who is satisfactory to the FHA as a borrower.

(2) *Master conditional commitment.* A master conditional commitment (MCC) may be used at the request of a mortgagee who desires conditional commitments for a group of five or more properties of the same type, or a group that includes more than one type when each type is represented by five or more properties. In such case, the Commissioner agrees to insure a mortgage on each of the properties in the group, provided each such property meets the terms specified in the commitment and is sold to a purchaser who is satisfactory to the FHA as a borrower. Mortgagees approved for direct endorsement (24 CFR 200.163) may use the MCC procedure as a "Master Appraisal" (MA) process. The master conditional commitment shall be in a specified amount (or amounts, when house types of different values are included). The Commissioner's agreement to insure is based upon a determination of the acceptability of each house type in terms of plans, specifications, and compliance with applicable building standards and upon an evaluation of the site, together with the subdivision or improved area of which the site is a part.

(3) *Firm commitment.* A firm commitment is requested where the mortgagee desires insurance of a mortgage on specified property with a named mortgagor in an amount and on terms set forth in the commitment.

(b) *Project mortgages.* In connection with project mortgages the mortgagee may specify which of two types of commitments he desires.

(1) *Commitment for insurance of advances.* A commitment for insurance of advances specifies that the FHA will insure construction advances, subject to compliance with the commitment terms.

(2) *Commitment to insure upon completion.* A commitment to insure upon completion does not include construction advances, but provides that the FHA will insure the mortgage upon completion of the project subject to compliance with the commitment terms.

[36 FR 24467, Dec. 22, 1971, as amended at 52 FR 6779, Mar. 5, 1987]

§ 200.149 Terms and conditions.

(a) The commitment sets forth the exact conditions under which the FHA will insure the mortgage loan. It indicates the maximum eligible term of years, the amount of such loan, the interest rate and the amount of the monthly installment, including principal and interest. In addition, in connection with proposed construction there may be provision for structural requirements and the number and type of inspections necessary. In the case of project mortgages, the commitment may indicate a schedule of advances which will be insured upon a finding that such advances are made in accordance with the commitment.

(b) A commitment is for a definite period of time and contains cancellation conditions which permit FHA to cancel the commitment in case of noncompliance with its terms. Upon full compliance with the terms of the commitment instrument, the FHA is legally bound to endorse the mortgage for insurance.

Insurance Endorsement

§ 200.150 Request for endorsement.

(a) When all conditions of the commitment are fully met, the commitment, together with all supporting documents such as the note, mortgage and any other exhibits as required by the terms of the commitment, are returned to HUD by the mortgagee for endorsement for insurance.

(b) For applications involving mortgages originated under the single family Direct Endorsement program, the mortgagee shall submit to the Secretary, within 30 days, or such additional time as approved by the Secretary, after the date of closing of the loan, the documents required by § 200.163 and shall certify that the principal amount of the loan has been disbursed to the mortgagor or for the mortgagor's account.

[48 FR 11937, Mar. 22, 1983]

§ 200.151 Final review.

Upon receipt of a request for endorsement the FHA makes a final review of the commitment and the supporting documents to determine that all are in proper order and that the terms and conditions have been fully performed.

§ 200.152 Endorsement for insurance.

(a) When it has been determined that the terms and conditions of the commitment have been fully complied with, the Secretary insures the mortgage and evidences the insurance by the issuance of a Mortgage Insurance Certificate. After issuance of the mortgage insurance certificate, the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are a part of the insurance contract.

(b) For applications involving mortgages originated under the single family Direct Endorsement program, if the mortgagee submits to the Secretary within 30 days after the date of closing of the loan, or such additional time as permitted by the Secretary, the documentation required by § 200.163, the Secretary will insure the loan and evidence the insurance by the issuance of a Mortgage Insurance Certificate. After issuance of the mortgage insurance certificate, the mortgagee is entitled to the benefits of insurance subject to compliance with the regulations which are a part of the insurance contract.

[48 FR 11937, Mar. 22, 1983]

CLAIMS FOR LOSSES

§ 200.153 Presentation of claim.

In the event of a default of an insured mortgage, the mortgagee presents a claim for insurance benefits. The application form for debentures and certificate of claim may be obtained from the Headquarters Office in Washington and is filed with the FHA Comptroller in Washington, D.C.

§ 200.154 Notice of default.

Upon default in a mortgage, the mortgagee submits a notice of default status to the FHA Insuring Office having jurisdiction over the area wherein the mortgage security is located.

§ 200.155 Claim requirements.

(a) In the home mortgage programs, a mortgagee is required, in order to perfect its claim for the payment of the insurance benefits, to: Assign the mortgage to the Commissioner; or obtain a deed in lieu of foreclosure and convey good marketable title to the property covered by the insured mortgage to the Commissioner; or foreclose the insured mortgage. In connection with the foreclosure of an insured mortgage the mortgagee may either convey good marketable title to the foreclosed property to the Commissioner, or file a claim for the insurance benefits without conveying title to the Commissioner in accordance with § 203.368.

(b) In project mortgage programs, in order to perfect a claim for payment, the mortgagee is required either to assign the project mortgage to the Commissioner, or to foreclose the property covered by the insured mortgage and tender to the Commissioner a good, marketable title. If the mortgagee elects to assign the project mortgage, the claim for insurance is reduced by one percent of the amount of the mortgage.

(The information collection requirements contained in this section were approved by the Office of Management and Budget and assigned control number 2535–0093)

[52 FR 1326, Jan. 13, 1987]

§ 200.156 Settlement of claims.

Upon approval of title conveyance thereof and delivery of possession of the property to the Commissioner, debentures and a certificate of claim are issued to the mortgagee in accordance with a computation provided by statute for the particular program. The debentures include an amount equal to the unpaid principal of the mortgage plus certain other items such as advances made for hazard insurance, payment of taxes, FHA mortgage insurance premium and a portion of foreclosure expenses. The terms of the statute strictly control the amounts which may be allowed in debentures. Certain expenditures made by the mortgagee, not allowed in the debentures, are included in the certificate of claim. In single family programs, payment of claims may be made in cash, debentures, or a combination of both as determined by the Commissioner, and a claim may be paid without the conveyance of title and delivery of possession to the Commissioner pursuant to § 203.368.

[36 FR 24467, Dec. 22, 1971, as amended at 52 FR 1327, Jan. 13, 1987]

§ 200.157 Provisions and characteristics of debentures.

(a) *Series and fund.* Debentures are issued in appropriate series and are the obligation of and issued in the name of the particular mortgage insurance fund under which the mortgage is insured.

(b) *Registration, denomination and execution.* Debentures are issued in registered form and in denominations of $50, $100, $500, $1,000, $5,000 and $10,000. Debentures are signed by the Federal Housing Commissioner by facsimile signature and imprinted with the seal of the Federal Housing Administration.

(c) *Rate of interest and interchangeability.* Debentures carry a rate of interest prescribed by the Commissioner but not in excess of an annual rate determined by the Secretary of the Treasury in accordance with a prescribed statutory formula involving yields or prices of outstanding marketable obligations of the United States. Debentures of the same series bearing

the same interest rate and having the same maturity date shall be freely interchangeable between the various authorized denominations.

(d) *Negotiability and redemption.* Debentures are negotiable and are fully guaranteed as to principal and interest by the United States. Debentures are redeemable on call issued by the Commissioner.

(e) *Payment of principal and interest.* Principal and interest of debentures shall be payable when due at the Treasury Department, Washington, D.C., or at any Government agency or agencies in the United States which the Secretary of the Treasury may from time to time designate for that purpose. The principal and interest shall be payable to the registered owner whose name shall be inscribed on the debentures or to the assignee as shown by executed assignments.

(f) *Transfer and use*—(1) *In general.* Debentures are fully transferable and may be freely sold or assigned. They may be used by approved mortgagees in lieu of cash for payment of FHA mortgage insurance premiums.

(2) *Mutual Mortgage Insurance Fund debentures.* Debentures of the Mutual Mortgage Insurance Fund may be used to pay mortgage insurance premiums on mortgages insured under sections 203(b), 203(h), and 203(i), of the National Housing Act.

(3) *Cooperative Management Housing Insurance Fund debentures.* Debentures which are the obligation of the Cooperative Management Housing Insurance Fund may be used to pay premiums on mortgages and loans which are insured under that Fund. Where the insurance of a mortgage or loan is transferred from the General Insurance Fund to the Cooperative Management Housing Insurance Fund, or where a mortgage or loan is endorsed for insurance pursuant to a commitment transferred to the Cooperative Management Housing Insurance Fund, debentures issued in connection with such mortgage or loan may be used to pay insurance premiums of either the Cooperative Management Housing Insurance Fund or the General Insurance Fund.

(4) *General Insurance Fund and debentures of other funds.* Debentures of the General Insurance Fund and those debentures issued as obligations of mortgage insurance funds and accounts in existence prior to the enactment of the Housing and Urban Development Act of 1965 (other than the Mutual Mortgage Insurance Fund) which are transferred by the 1965 Act to the General Insurance Fund may be used to pay mortgage insurance premiums only on the following mortgages and loans:

(i) Those which are the obligation of the General Insurance Fund.

(ii) Those transferred from the General Insurance Fund to the Cooperative Management Housing Insurance Fund.

(iii) Those endorsed for insurance pursuant to commitments transferred to the Cooperative Management Housing Insurance Fund.

§ 200.158 Applicability of Treasury regulations to debenture transactions.

The U.S. Treasury Department is the agent for the Commissioner in connection with transactions and operations relating to debentures. The general regulations of the U.S. Treasury Department governing transactions and operations in United States registered bonds, and the payment of interest thereon, are adopted, so far as applicable, as the regulations of the Commissioner for similar transactions and operations in debentures, including the payment of interest on, with the following exceptions:

(a) *Payment of final interest on maturing or called debentures.* If the notice of maturity or call for redemption shall so provide, the final installment of interest payable on any debentures at maturity or earlier redemption date may be paid with the principal in accordance with the assignments on the debentures instead of by separate check drawn to the order of the registered payee and forwarded to him at his address of record.

(b) *Closing of transfer books.* If the call for redemption shall so provide, the books maintained by the Treasury Department may be closed against transfers and denominational exchanges in debentures for three full months preceding any interest pay-

ment date with respect to any debentures called for redemption on such interest payment date.

(c) *Detached assignments.* Detached assignments shall be recognized and accepted in any particular case in which the use of detached assignments is specifically authorized by the Treasury Department. Any assignment not made upon the debentures is considered a detached assignment.

(d) *Assignments by corporations for redemption for their own account.* A debenture registered in the name of, or assigned to, a corporation will be paid to such corporation, at maturity or earlier redemption date, upon an appropriate assignment for that purpose executed on behalf of the corporation by a duly authorized officer thereof. An assignment so executed and duly attested to in accordance with Treasury Department regulations will ordinarily be accepted without proof of the officer's authority. In all cases within this exception, payment will be made only by check drawn to the order of the corporation.

§ 200.159 Relief on account of lost, stolen, destroyed, mutilated or defaced debentures.

The statutes of the United States and the regulations of the Treasury Department governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to debentures, are adopted as the regulations of the Commissioner for the issuance of substitute debentures or the payment of lost, stolen, destroyed, mutilated or defaced debentures.

§ 200.160 Redemption of debentures prior to maturity.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

§ 200.161 Administration of debenture transactions.

The Secretary of the Treasury or the Acting Secretary of the Treasury is authorized and empowered, on behalf of the Commissioner, to administer the regulations governing any transactions and operations in debentures, to do all things necessary to conduct such transactions and operations, and to delegate such authority at his discretion to other officers, employees, and agents of the U.S. Treasury Department. At his discretion the Secretary, the Under Secretary, or any Assistant Secretary of the Treasury acting by direction of the Secretary, is authorized to waive any such regulation on behalf of the Commissioner in any particular case where a similar regulation of the Treasury Department with respect to United States bonds or interest thereon would be waived.

§ 200.162 Certificates of claim.

The certificate of claim issued to the mortgagee at the time debentures are issued constitutes an agreement by the FHA that after the FHA has recovered its investment in a particular property any excess over and above such investment is available for payment on the certificate of claim. Certificates of claim bear interest at the rate of 3 percent per annum.

DIRECT ENDORSEMENT

§ 200.163 Direct endorsement.

(a) *Definition and applicability.* Single family mortgage insurance applications, eligible for processing under this section, are underwritten and closed by eligible mortgagees and the documentation required by para-

graphs (b) and (c) of this section are submitted to HUD/FHA for mortgage insurance endorsement in accordance with paragraph (d) of this section. HUD/FHA does not review applications for mortgage insurance or issue commitments except as provided by paragraph (b) of this section and § 200.164(g) before the mortgage is executed and submitted to be considered for endorsement.

(1) Single family mortgage insurance loans defined under sections 203(b), 203(i), 221(d)(2), 234(c) and 245 of the National Housing Act are eligible for processing under this section.

(2) Single family mortgages insured under any of the programs listed in paragraph (a)(1) of this section pursuant to sections 223, 225, 238(c), 244, 247, or 248 of the National Housing Act, or under section 203(b) of the Act as modified by section 203(q), are not eligible for processing under this section. The provision contained in 24 CFR 221.55 which permits a builder-mortgagor to sell a property to a displaced family on a deferred basis is not available in the Direct Endorsement program.

(3) The Secretary shall publish in the Mortgagees' Guide to the Direct Endorsement program a list of the mortgage loans by type which are eligible for Direct Endorsement processing under this section. Such listing shall set forth with particularity the required certifications applicable to each mortgage type.

(b) *Mortgagee underwriting and submission for endorsement*—(1) *Underwriting/due diligence.* A mortgagee, authorized to submit mortgages under this section, shall exercise due diligence when underwriting mortgages processed under this section. Due diligence means that care which a mortgagee would exercise in obtaining and verifying information for a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee procedures that evidence such due diligence shall be incorporated as part of the Quality Control Plan required under § 200.164(e).

(2) *Guidelines for underwriting procedures.* The Secretary shall publish guidelines for underwriting procedures in the Mortgagees' Guide to the Direct Endorsement Program. Compliance with these guidelines is deemed to be the minimum exercise of due diligence in underwriting mortgage loans.

(3) *Appraisal.* An approved mortgagee shall appraise the property, using an appraiser assigned by HUD from its current fee panel or a staff appraiser approved by HUD. In those cases where the mortgagee has a financial interest in, is owned by or is affiliated with a building or selling entity, the mortgagee shall use an appraiser and inspector assigned by HUD from its fee panel. In lieu of appraising the property, an approved mortgagee may, for those properties which HUD accepts as proposed construction, utilize a HUD conditional commitment or master conditional commitment, or a Department of Veterans Affairs certificate of reasonable value or master certificate of reasonable value.

(4) *Mortgagor's income.* The mortgagee shall determine whether the mortgagor's income is and will be adequate to meet the periodic payments under the mortgage, and shall review the eligibility of the property and prospective mortgagor under 24 CFR Part 203, 221, or 234.

(5) *Submission for endorsement.* Upon a determination by the mortgagee that the proposed mortgage is eligible for insurance under 24 CFR Part 203, 221, or 234 the mortgage is executed. Within 30 days, or such other time as is approved by the Secretary, after the date of closing of the loan, the mortgagee shall submit the following documents, as are appropriate, and which are properly executed, to HUD/FHA at which point the loan is considered for endorsement in accordance with paragraph (d) of this section:

(i) Property appraisal upon a form prescribed by the Secretary (or HUD conditional commitment or master conditional commitment, or Department of Veterans Affairs certificate of reasonable value or master certificate of reasonable value) and all accompanying documents required by the Secretary;

(ii) An application for insurance of the mortgage upon a form prescribed by the Secretary and all accompany-

ing documents required by the Secretary;

(iii) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary.

(iv) A warranty of completion, on a form prescribed by the Secretary, (for proposed construction cases);

(v) An Underwriter Certification that the requirements of paragraph (c) of this section have been satisfied;

(vi) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes in accordance with §§ 203.16 and 203.36, or §§ 203.16 and 203.36 as incorporated by reference in § 221.1, or §§ 234.15 and 234.67;

(vii) Where applicable, a certificate of intent to occupy by military personnel, in accordance with § 203.31, or § 203.31 as incorporated by reference in § 221.1, or § 234.51;

(viii) Where a mortgage for an existing property is to be insured under section 221(d)(2) of the National Housing Act, a letter from the local government official that the property meets applicable code requirements if appropriate;

(ix) For proposed construction, where an individual water or sewer system is being used, approval letter from local health authority indicating approval of the water supply and/or sewage disposal installation; and

(x) For proposed construction, where the mortgagee does not obtain a VA CRV, VA MCRV, HUD conditional commitment, HUD master conditional commitment or a consumer protection or warranty plan, or submit the plans and specifications for HUD's prior approval, a certification by a HUD-approved architect, engineer or construction analyst that the plans and specifications comply with the applicable property standards.

(xi) A mortgagee closing certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement and certifying that the mortgage complies with the requirements of this paragraph (b). This mortgagee certification is in addition to any certifications required of the mortgagee or the mortgagor (or both) on HUD forms 92800 and 92900. The certification shall include (in addition to any supplemental certification items prescribed and published under paragraph (f) of this section) each of the below-listed certification items which apply to the mortgage loan submitted for endorsement:

(A) That the mortgage satisfies the requirements (as appropriate) of 24 CFR 203.17, or the requirements of 24 CFR 221.5, 221.25, 221.30, 221.32, 221.35, 221.40, and 221.45 or 234.25;

(B) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, or 203.37 as made applicable in § 221.1(a), or § 234.65;

(C) That any graduated payment mortgage meets the requirements established under 24 CFR 203.45 or 234.75; any growing equity mortgage meets the requirements established under 24 CFR 203.47 or 234.77; and any adjustable rate mortgage meets the requirements established under 24 CFR 203.49 or 234.79;

(D) That the property covered by the mortgage meets the flood plain requirements set forth in § 203.16a, or § 203.16a as made applicable in § 221.1(a), or § 234.17;

(E) That the stated mortgage amount (*1*) satisfies the requirements of 24 CFR 203.18, 203.18a, 203.18b, 203.29, or § 203.29 as made applicable in §§ 2221.1(a), 221.10, 221.11, 221.20, 221.50, 234.27, or 234.49; and (*2*) for a mortgage given to refinance a mortgage, the stated amount satisfies the limitations set forth in paragraph (b)(5)(xi)(E)(1) of this section, and any further limitation prescribed by the Secretary;

(F) That the mortgagor has made the minimum investment required by 24 CFR 203.19, 221.50, or 234.28, and no prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary

vere included in determining the nortgator's minimum investment;

(G) That for a mortgage involving efinancing to be insured under 24 CFR 221.21, the mortgage, in addition o the limitations contained in § 221.10, 221.11 and 221.20, does not xceed the estimated cost of repair nd rehabilitation and the amount re-uired to refinance the existing in-ebtedness secured by the property;

(H) That for a property located in n outlaying area, the mortgage meets he requirements of 24 CFR 203.18(d); nd

(I) That a mortgage to be insured nder section 234(c) of the National lousing Act meets the requirements f 24 CFR 234.59.

(c) *Underwriter certification.* The nderwriter shall personally review ne appraisal report and credit appli-ation (including the analysis per-ormed on the worksheets) and shall ertify, for and on behalf of the mort-agee on a form prescribed by the Sec-etary, that the proposed mortgage omplies with HUD underwriting re-uirements. For each mortgage re-ewed, this Underwriter Certification all include an identification of the ortgage by type, as identified under 200.163(a)(3); a statement that the nderwriter has personally reviewed e relevant documents; and a state-ent that the mortgage complies with e requirements of this paragraph). The Underwriter Certification is in dition to any certifications required the mortgagee, the mortgagor, or th on HUD forms 92800 and 92900. ne Underwriter Certification shall clude (in addition to any supplemen-certification items prescribed and blished under paragraph (f) of this ction) each of the below-listed certi-ation items which apply to the ortgage loan submitted for endorse-ent:

(1) That the mortgage property is lo-ed in a community where the hous-standards meet the requirements the Secretary as required by 24 R 203.40;

(2) That there is located on the ortgage property a dwelling unit de-ned principally for residential use not more than four families, as re-quired by 24 CFR 203.38, or by 203.38 as made applicable in § 221.1(a);

(3) That the mortgagor's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21 or § 203.21 as made applicable in 221.1(a), or as required under § 234.36;

(4) That the mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required by 24 CFR 203.33, or 203.33 as made applicable in § 221.1(a), or § 234.56;

(5) That the mortgagor's general credit standing is satisfactory, as required under 24 CFR 203.34, or 203.34 as made applicable in § 221.1(a), or § 234.57;

(6) That the buildings on the property secured by the mortgage comply with the applicable property standards issued by HUD as required by 24 CFR Part 200, Subpart S, for proposed construction, and the standards set forth in HUD Handbooks 4905.1, for existing construction, and 4940.4, for rehabilitation construction;

(7) In cases where the mortgaged property is subject to—

(i) A secondary mortgage or loan made or insured, or other secondary lien held, by a Federal State or local government agency or instrumentality or

(ii) A second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality or

(iii) A junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured; that the applicable requirements of 24 CFR 203.32 (b), (c) or (d), 203.32 (b), (c) or (d) as made applicable in § 221.1(a), or § 234.55 are met;

(8) That the property designed for a two-, three- or four-family residence has one of the dwelling units occupied by the mortgagor, as required by 24 CFR 221.12;

(9) For a condominium unit, that the mortgaged property is in a project that has been approved by HUD under 24 CFR 234.26;

(10) In the case of proposed or new construction to which 24 CFR 203.12 is applicable, that the property covered by the application for insurance meets the requirements of 24 CFR 203.12(c); and

(11) That the property covered by the mortgage is not located in an area that is precluded from receiving Federal financial assistance pursuant to the Coastal Barrier Resources Act (Pub. L. 97-349).

(d) *HUD/FHA Pre-Endorsement Review.* Upon submission by an approved mortgagee of the documents required by paragraphs (b) and (c) of this section, HUD/FHA will review the loan documents to determine:

(1) That the mortgage is executed on a form which meets the requirements of the Secretary.

(2) That the mortgage maturity meets the requirements of §§ 203.17, 221.30 or § 234.25 as applicable;

(3) That the stated mortgage amount does not exceed the maximum dollar limitation permissible under §§ 203.18, 203.18a, 203.18b, 203.29, or § 203.29 as incorporated by reference in §§ 221.1, 203.45, 203.46, 221.10, 221.11, 234.27, 234.49, 234.75, or § 234.76 as applicable.

(4) That the mortgage interest rate meets the requirements, as applicable, of §§ 203.20, 203.51, 203.20 and 203.51 as incorporated by reference in § 221.1, or § 234.29;

(5) That all documents required by paragraph (b) of this section are submitted; and

(6) That all necessary certifications are made in accordance with paragraphs (b) and (c) of this section.

If, following this review, the mortgage is determined to be eligible, it is endorsed for insurance. If the mortgage is determined to be ineligible, HUD will inform the mortgagee in writing of this fact, and include the reasons thereof and any corrective actions that may be taken.

(e) *Post-Endorsement Review.* Following endorsement, HUD/FHA will review all documents required by paragraphs (b) and (c) of this section. If following this review HUD/FHA determines that the mortgage does not satisfy the requirements of the single family Direct Endorsement program, the Department may place the mortgagee on probation, withdraw the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 200.164(h) or withdraw the mortgagee's HUD/FHA approval pursuant to the provisions of 24 CFR Part 25.

(f) *Supplementary Items.* The Secretary may prescribe supplementary certifications, mortgage types and modifications thereof without prior notice and public procedure. These supplementary items will be published in the Mortgagee's Guide to the Direct Endorsement Program. Specific notice of these supplementary items shall be published in the FEDERAL REGISTER, in accordance with 5 U.S.C. 552 and 24 CFR 15.11. Such notice may incorporate these supplementary items by reference. In addition, these supplementary items will be available for examination and distribution in the Information Center, Room 1104, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, and in each HUD Regional and Area Office.

[48 FR 11937, Mar. 22, 1983, as amended at 49 FR 19454, May 8, 1984; 49 FR 23585, June 6, 1984; 50 FR 20097, May 14, 1985; 51 FR 21871, June 16, 1986; 52 FR 48201, Dec. 21, 1987; 53 FR 3202, Feb. 4, 1988; 53 FR 4498, Feb. 16, 1988; 53 FR 6601, Mar. 2, 1988; 53 FR 9869, Mar. 28, 1988; 53 FR 34285, Sept. 6, 1988; 54 FR 39525, Sept. 27, 1989]

§ 200.164 Approval of direct endorsement mortgagees.

(a) Mortgagees shall comply with the following requirements when applying for approval:

(1) Submit an application to the HUD area office in whose jurisdiction the mortgagee seeks to process loans pursuant to § 200.163;

(2) Submit (i) documentation showing compliance with § 200.164 (b), (c) and (d); (ii) the Quality Control Plan which complies with § 200.164(e); and (iii) other such information as the Secretary may require.

(b) To participate in the Direct Endorsement program set forth in § 200.163, a mortgagee must be an approved mortgagee meeting the requirements of 24 CFR 203.3 or 203.4 or 203.7(a), and this section.

(c) The mortgagee must establish that it meets the following qualifications:

(1) The mortgagee has five years of experience in the origination of single family mortgages. The Department will approve mortgagees with less than five years experience in the origination of single family mortgages if a principal officer has had a minimum of five years of managerial experience in the origination of single family mortgages;

(2) The mortgagee, other than a supervised mortgagee or governmental institution, is approved as a Federal National Mortgage Association (FNMA) seller, as an issuer of Government National Mortgage Association (GNMA) mortgage-backed securities, or has a net worth, in assets acceptable to the Secretary, of not less than $250,000.

(d) The mortgagee, to be approved for participation in the Direct Endorsement program, must have on its permanent staff an underwriter approved by the Department for participation in this program and authorized by the mortgagee to bind the mortgagee on matters involving the origination of mortgage loans under this program. The technical staff utilized in the Direct Endorsement program by the mortgagee, including appraisers, construction analysts, inspectors, mortgage credit examiners, architects and engineers, must also be approved by the Department. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a HUD panel. A mortgagee which has a financial interest in, owns, is owned by, or is affiliated with a building/selling entity may originate, under the Direct Endorsement program and process mortgages for this entity, only if the property appraisals and inspections are done by independent appraisers and inspectors approved, and assigned, by the Department, rather than by appraisers or inspectors on the staff of the mortgagee. For proposed construction, where the mortgagee does not obtain a VA CRV, VA MCRV, HUD conditional commitment, or HUD master conditional commitment, or a consumer protection or warranty plan, or submit the plans and specifications for HUD's prior approval, then the mortgagee must utilize an architect, engineer or construction analyst, approved by HUD, to certify that the plans and specifications meet the applicable standards.

(e) A mortgagee shall implement an acceptable Quality Control Plan that is designed to assure mortgagee compliance with HUD underwriting requirements for the Direct Endorsement program. Such plan will be kept current and available upon request for HUD.

(f) A mortgagee's underwriter and technical staff shall satisfactorily complete a training program on HUD underwriting requirements as a condition to approval under this section.

(g) To be eligible to participate in the Direct Endorsement program, a mortgagee qualified to participate in the program pursuant to this Part must submit initially fifteen mortgages processed in accordance with the requirements set forth under § 200.163. The documents required by § 200.163 will be reviewed by the Department and, if acceptable, commitments will be issued prior to endorsement of the loans. If the underwriting and processing of these fifteen mortgages is satisfactory, then the mortgagee may be approved to close subsequent mortgages and submit them directly for endorsement in accordance with the process set forth in § 200.163. Unsatisfactory performance by the mortgagee at this stage constitutes grounds for denial of participation in the program, or for continued pre-endorsement review of a mortgagee's submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (h)(2) of this section.

(h) *Mortgagee sanctions.* Depending upon the nature and extent of the noncompliance with the requirements of the Direct Endorsement program, as determined by HUD, HUD may take any of the following actions:

(1) *Probation.* HUD may place a mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the single

family Direct Endorsement program. During the probation period the mortgagee may continue to process mortgage loans pursuant to § 200.163 subject to conditions required by HUD. HUD may: Require the mortgagee (i) To process mortgages in accordance with paragraph (g) of this section; (ii) to submit to additional training; (iii) to make changes in the Quality Control Plan of paragraph (e) of this section; and (iv) to take other actions, which may include, but are not limited to, periodic reporting to HUD, and submission to HUD on internal audits.

(2) *Withdrawal of approval of Direct Endorsement Mortgagees.* (i) HUD may withdraw a mortgagee's approval to participate in the Direct Endorsement program upon written notice which states the grounds for the action and which provides for the right to an informal hearing before a decision maker in the local HUD office. Such hearing shall be expeditiously arranged and the mortgagee may be represented by counsel.

(ii) After consideration of the materials presented, the decision maker in the local HUD office shall advise the mortgagee in writing whether the withdrawal is rescinded, modified or affirmed.

(iii) The mortgagee may appeal such decision to the Assistant Secretary for Housing. A decision by the Assistant Secretary shall constitute final agency action.

(3) *Withdrawal of HUD-FHA approval.* Serious noncompliance with the requirements of the Direct Endorsement program may also result in withdrawal of a mortgagee's HUD/FHA approval pursuant to 24 CFR Part 25.

(i) *Notification of changes.* The mortgagee shall promptly notify those field offices which have granted approval under this section of any changes that affect qualifications under paragraphs (b), (c) and/or (d) of this section.

[48 FR 11939, Mar. 22, 1983]

§ 200.164a Waivers.

The Secretary in an individual case may waive any requirement not required by statute if the Secretary finds that application of such requirement would adversely affect achi ment of the purposes of the Act. vided, however, this waiver requ ment does not apply to the requ ments in Subpart E, §§ 200. through 200.162. Each such wai shall be in writing and supported b statement of the facts and grou forming the basis for the waiver. authority under this section may delegated to the Assistant Secret for Housing-Federal Housing Comm sioner, but shall not be redelegated.

[48 FR 11940, Mar. 22, 1983]

Subpart F—Property Improvemen Loan Procedures and Processing

Loan Transaction

§ 200.165 Lender's application for ins ance.

Any financial institution which h qualified as an approved lender ma apply to the Federal Housing Admini tration for insurance against losses c account of personal loans made for a terations, repairs or improvemen upon or in connection with existin structures which substantially protec or improve basic livability or utility a well as insurance against losses in co nection with the building of new non residential farm and non-farm struc tures. The maximum principal amoun of such loans is set forth in section 2 Title I of the National Housing Act.

§ 200.166 Lending area.

(a) The Federal Housing Administra tion expects a qualified lender to con fine its Property Improvement loan business to the trading area usually served by the institution in its normal operations. The lender must be in a position to investigate credits, make spot checks of the improvements being financed, and have its own employee or qualified representative make personal contact with delinquent borrowers.

(b) Prospective borrowers may obtain a list of qualified lenders in the particular area by writing to the Federal Housing Administration field office in the locality or to the Headquarters Office in Washington, D.C. Prescribed forms for use in connection

with Property Improvement loans are made available by lenders.

§ 200.167 Credit investigation of borrower.

Property Improvement loans are primarily character loans, and the credit standing and credit instrument of the borrower are of primary importance. In accepting a contract of insurance the lender assumes the responsibility of applying sound principles in the evaluation of credit. The borrower applicant must furnish the lender with an executed credit application on a form approved by the Commissioner and disclosing information sufficient to satisfy the lender that the applicant represents an acceptable credit risk, including information that the loan is for the alteration, repair or improvement of property in which the borrower has an eligible interest as owner or lessee. The determination as to the eligibility of a loan for insurance and the approval of borrower's credit and all other details of the transaction are handled by the lender, without prior examination or approval of the transaction by the Federal Housing Administration, except as specifically required by the regulations.

§ 200.168 Other requirements for a Property Improvement loan.

The note or other evidence of the obligation taken by the insured must be valid and enforceable against the borrower and must be payable in installments. The borrower must have either a fee title, life estate, a purchaser's interest in a land contract, or a lease having a fixed term expiring not less than six calendar months after the maturity of the loan. The fee title or life estate may be subject to a mortgage or other lien. The regulations provide maximum maturity and maximum amounts for loans of various classes and sets forth maximum financing charges and certain items which are considered ineligible for loans.

§ 200.169 Direct borrower loans.

The Property Improvement loan may be initiated by a borrower who gives his credit application directly to a lender. The proceeds of a loan thus made are delivered directly to such borrower without the intervention or participation of a dealer or other intermediary.

§ 200.170 Loan through a dealer.

Also eligible as Property Improvement loans are dealer-originated cases where the dealer or contractor first obtains a credit application for the loan from the borrower and, after completing the work, has a note and completion certificate signed by the borrower. The dealer presents these documents to the lender and receives the proceeds of the loan, after the lender determines that the transaction is eligible for insurance. The Federal Housing Administration does not approve dealers for participation in the Property Improvement loan program. This is a responsibility of the lender which by investigation must determine that the dealer is reliable, financially responsible and qualified to perform satisfactorily the work to be financed and is equipped to extend proper service to the customer. The lender also makes the initial determination that the transaction is or is not insurable.

§ 200.171 Notice to borrower.

At least six calendar days prior to making disbursement to a dealer the lender is required to give the borrower written notice of the insured's intention to disburse the proceeds of the loan if the application is approved. Although the borrower need not acknowledge receipt of the notice the lender must have a record of having mailed or delivered such notice.

Disbursement

§ 200.172 Disbursement of proceeds to dealer.

In connection with all loans not made directly to the borrower, the lender must have investigated and approved the dealer and have in its possession, properly signed and dated:

(a) Completion certificate signed by borrower indicating work or materials have been satisfactorily completed or delivered by dealer.

(b) Copy of dealer's contract or sales agreement signed by borrower and

dealer describing the type and extent of improvements to be made and the material to be used.

(c) Borrower's authorization certificate, if note is payable to lender.

§ 200.173 Disbursement of proceeds to borrower.

The lender may disburse the proceeds of the note directly to the borrower by cash, by check or money order drawn solely in favor of the borrower, or by crediting the borrower's account. In such transactions, the dealer does not participate in the disbursement in any manner and the borrower, has complete control of the funds at all times.

Report and Reserve

§ 200.174 Report of loans.

Within 31 days after the loan is made or the note is purchased from the dealer the lender submits to the Federal Housing Administration individual reports setting forth on a prescribed form the details of each transaction. This information, including the name of the borrower, the location of the property, the amount of loan advanced, the finance charges, the date of the note, and the terms of payment is the basis for computing the insurance premium which will be due and payable by the lender and is the official record of the transaction with the Administration. This report results in the automatic insurance of the loan as soon as the required insurance premium is paid.

§ 200.175 Insurance charge.

The regulations provide for an annual insurance charge based on a fractional percentage of the net proceeds of each loan reported for insurance. The lender is billed once a month on all loans reported for insurance during the previous period the receipt of which have been acknowledged by the Commissioner.

§ 200.176 Insurance reserves.

For each lender holding a contract of insurance, there is established by the Federal Housing Administration a general insurance reserve the amount of which is based upon the number of loans the institution reports for ance during certain periods. For eligible loan reported by a lende accepted for insurance, 10 perce the net proceeds of the loan is cre to the lenders' insurance reserve cumulative credits to the insuran serve for each lender thus equa percent of the net amount adv by it on all eligible loans and af insurance against losses on its ov lending operation.

Claims for Reimbursement for L

§ 200.177 Claims for payment.

Claim for reimbursement for los an eligible Property Improvement may be made to the Federal Hou Administrator by the lender after borrower's default, provided dem has been made for the full unpaid ance of the note. The claim mus made within a prescribed period be accompanied by the lender's c plete credit and collection file for transaction. The note and any secu held or judgment taken must be d assigned to the United States. An amination and audit of each clai made to determine compliance w the provisions of the National Hous Act and the regulations.

§ 200.178 Amount of claim.

(a) After it has been determi that the loan and the lender's cla for loss are eligible, the lender is re bursed by a U.S. Treasury check for percent of the loss sustained on t defaulted obligation. In addition, t lender may be reimbursed as provid by the regulations for a certain p portion of attorney's fees and unc lected court costs arising out of effo to collect the note.

(b) If the claim is disapproved t lender is notified of the basis of su disapproval, with return to it of the i surance premium and all relat papers and documents. Appeal for r consideration of disapproval may h had by addressing a written request t Headquarters Office in Washingto D.C.

§ 200.179 Establishment of account.

The moneys derived from premium charges and all moneys collected as fees of any kind in connection with insurance of financial institutions, and all moneys derived from the sale, collection, disposition, or compromise of any debt, contract, claim, property or security assigned or held by the Commissioner are deposited in an account in the Treasury of the United States, which account is available for defraying the operating expenses of the Federal Housing Administration in connection with insurance of financial institutions and any amounts in such account which are not needed for such purpose are available for the payment of claims in connection with the insurance granted under the statute.

Subpart G—[Reserved]

Subpart H—Participation and Compliance Requirements

SOURCE: 45 FR 54199, Aug. 14, 1980, unless otherwise noted.

PREVIOUS PARTICIPATION REVIEW AND CLEARANCE PROCEDURE

§ 200.210 Policy.

It is the Department's policy that participants in its housing programs be responsible individuals and organizations who will honor their legal, financial and contractual obligations. Accordingly, uniform standards are established in this part for approval, disapproval, or withholding of action on principals in projects based upon their past performance as well as other aspects of their records.

§ 200.213 Applicability of procedure.

The Previous Participation Review and Clearance procedure set forth in this part is administered by the Assistant Secretary for Housing-Federal Housing Commissioner and is applicable to all principals and to their:

(a) Projects already financed or which are proposed to be financed with a mortgage insured under the National Housing Act and projects subject to a mortgage held by the Secretary under that Act or projects acquired by the Secretary under that Act (FHA projects);

(b) Projects financed or to be financed with direct loans or projects acquired by the Secretary pursuant to Section 202 of the Housing Act of 1959 (Housing for the Elderly and Handicapped);

(c) Projects in which 20% or more of the units now receive or will receive a subsidy in the form of:

(1) Interest reduction payments under Section 236 of the National Housing Act;

(2) Rent Supplement payments under Section 101 of the Housing and Urban Development Act of 1965;

(3) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (with the exception of the programs described in 24 CFR Part 882, which are the Section 8 Existing Housing and Moderate Rehabilitation programs);

(d) Public Housing projects financed or to be financed or modernized under the United States Housing Act of 1937; and

(e) Sales of projects by the Secretary.

§ 200.215 Definitions.

(a) *Affiliate.* Any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

(b) *Felony.* A felony is any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State *and* punishable by a term of imprisonment of two years or less.

(c) *Packager or Consultant.* A person or firm that furnishes or proposes to furnish advisory services in connection with the financing or construction of a project and the related HUD requirements. Such services may include, but are not limited to, the selection and negotiation of contracts with a general contractor, architect, attorney or management agent.

(d) *Participation Control Officer.* (See § 200.224)

(e) *Principal.* (1) An individual, joint venture, partnership, corporation, trust, nonprofit association or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, Turnkey Developer, management agent, packager, or consultant and architects and attorneys who have any interest in the project other than an arms-length fee arrangement for professional services.

(2) The term principal also includes: (i) Any affiliates of a principal; (ii) if the principal is a partnership, all general partners, and each limited partner having a 25 percent or more interest in the partnership; (iii) if the principal is a public or private corporation or governmental entity; the President, Vice-President, Secretary and Treasurer and any other executive officers who are directly responsible to the Board of Directors, or the equivalent thereof; all the directors; and each stockholder having a 10 percent or more interest.

(3) Specifically excepted from this definition of a principal are: (i) Parties whose sole interest is that of purchaser or owner of less than five individual unit(s) in the same condominium or cooperative development; (ii) parties whose sole interest is that of a tenant; and (iii) Public Housing Agencies.

(f) *Project.* A project is: (1) Five or more residential units covered by a single mortgage, loan or contract of assistance; (2) a hospital, group practice facility or nursing home; (3) cooperative and condominium developments; and (4) a subdivision being developed and financed with a mortgage under Title X of the National Housing Act.

(g) *Review Committee.* (See §§ 200.224 and 200.93)

§ 200.217 Filing of previous participation certificate on prescribed form.

(a) A previous participation certificate on a form prescribed by the Assistant Secretary of Housing-Federal Housing Commissioner shall be completed by every principal in each of the following transactions and shall be filed with HUD at the times specified herein:

(1) Projects to be financed with mortgages insured under the National Housing Act (FHA)—With an Application for a Site Appraisal and Market Analysis Letter, Feasibility Letter, Conditional Commitment for Mortgage Insurance, or Firm Commitment for Mortgage Insurance, whichever Application is first filed;

(2) Projects to be financed pursuant to Section 202 of the Housing Act of 1959 (Elderly and Handicapped)—With the Application for a Fund Reservation;

(3) Public housing projects to be financed pursuant to the United States Housing Act of 1937:

(i) The developer and prime contractor—With the Turnkey proposal or Conventional Construction Bid;

(ii) All other Principals—Prior to selection;

(4) Projects in which 20% or more of the units are to receive a subsidy as described under § 200.213(c)—With the first request for a reservation of funds for assistance payments;

(5) Purchase of a project subject to a mortgage insured or held by the Secretary—With the Application for Transfer of Physical Assets;

(6) Purchase of a Secretary-owned project—With the Bid to Purchase;

(7) Proposed substitution or addition of a principal, such as management agents or partners or proposed participation in a different capacity from that previously approved for the same project—Prior to the date that the proposed action or transfer is to become final; and

(8) Proposed acquisition by existing limited partner or stockholder of additional interest resulting in a total interest of at least 25 percent or 10 percent, respectively—Prior to the proposed acquisition.

(b) Certificates are not required for interests acquired by inheritance or by Court decree.

§ 200.218 Who must certify and sign.

All principals must certify and sign the certificate personally as to their individual record and are responsible for its timely filing with the HUD Area Office in whose jurisdiction the project or proposal is located except:

(a) When a corporation is a principal all its officers, directors and principal stockholders need not individually

sign, certify nor file the certificate when they all have the same record. When their previous participation records are the same the officer authorized to sign for the corporation will list on the certificate the full names for all such principals connected with the corporation who do not elect to sign. Those principals who have a separate participation record outside that of their corporation must certify, sign and file. The objective is full disclosure.

(b) The Participation Control Officer is authorized to waive the requirement for signatures for good cause in cases where he finds that adequate provision has been made for full disclosure, and the signature is thereafter provided.

§ 200.219 Content of certification.

(a) Each principal who executes the certificate certifies that:

(1) The certificate contains a listing of every assisted or insured project of HUD, Farmers Home Administration and State or local government housing finance agencies in which the principal has been or is now a principal;

(2) For a period beginning 10 years prior to the date of the certificate under review and except as shown on the certificate:

(i) No mortgage on a project listed has ever been in default nor has mortgage relief been given;

(ii) There have been no defaults or noncompliances under any conventional construction contract or Turnkey contract of sale in connection with a public housing project;

(iii) There are no known unresolved findings raised as a result of HUD audits, management reviews or other governmental investigations;

(iv) There has been no suspension or termination of payments under any HUD assistance contract attributable to the fault or negligence of principal;

(v) The principal has not been convicted of a felony (See definitions § 200.215(b)) and is not presently the subject of a complaint or indictment charging a felony;

(vi) The principal has not been suspended, debarred, or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;

(vii) The principal has not defaulted on an obligation covered by a surety or performance bond, and has not been the subject of a Claim under an employee fidelity bond;

(3) The principal has listed all parties who are known to him to be principals under § 200.215(e)(2);

(4) The principal is not a HUD employee or a member of an employee's immediate household as defined by HUD's Standards of Conduct in 24 CFR 0.735-205(c);

(5) Except as shown on the certificate under review, the principal is not a participant: (i) In a HUD assisted or insured project on which construction, as of the date of said certificate, has stopped for a period in excess of twenty days or; (ii) in an insured project on which construction, as of the date of said certificate, has been substantially completed for more than 90 days and documents for closing, including cost certification, have not been filed with HUD;

(b) The project owner shall certify that he has also listed all other parties who are principals under § 200.215(e)(1).

(c) If a principal cannot certify as to any items under paragraphs (a) and (b) of this section, such items may be deleted from the face of the certificate and a full explanation of the reason for the deletion, signed by the principal, may be attached to the certificate for HUD's review, evaluation and determination.

(d) Each principal who executes the certificate must also certify that said principal is not a Member of Congress or a Resident Commissioner.

§ 200.222 Certification of previous record on basis of a master list.

A principal may avoid repetitious listings by providing HUD with a complete master list, acceptable to the Participation Control Officer, of all projects in which the principal has participated. Where such a list has been provided, the principal may submit a certificate which refers to the master list and which supplements it by the addition of all information

required under § 200.219 with respect to occurrences since the date of the master list (including subsequent occurrences with respect to the projects on the master list as well as subsequent projects). Partners, corporate officers, directors and stockholders may likewise refer to and thereby incorporate their firm's master list when they certify.

§ 200.224 Multifamily Participation Review Committee and Participation Control Officer.

The membership and authority of the Multifamily Participation Review Committee (hereinafter referred to as the Review Committee) are set forth in § 200.93. A majority of the members of the Review Committee shall constitute a quorum. The Executive Secretary of the Review Committee shall be the Participation Control Officer under this part and shall serve under the administrative supervision of the Director of the Participation and Compliance Division, who acts as Participation Control Officer in his absence.

§ 200.225 Approvals by Area Managers for limited partners.

The Area Manager of the HUD Area Office where the certificate is filed is authorized to review the certificate and approve for participation limited partner principals: *Provided,* That they have no previous record of participation or their only participation in previous projects covered by these regulations has been as a limited partner. All other certificates must be forwarded to the Participation Control Officer.

§ 200.226 Determination by the Participation Control Officer.

(a) The Participation Control Officer is authorized to:

(1) Approve a principal when a review of the previous participation certificate and other available information reveals that there are no grounds to withhold approval or disapprove under the standards in § 200.229 or § 200.230, respectively;

(2) Disapprove a principal who; (i) is suspended or debarred or otherwise restricted under 24 CFR Part 24; or (ii) has been disapproved for participation no more than 12 months prior to th filing of the certificate under revie unless the principal has requested r consideration of the disapproval;

(3) Refer all other cases to th Review Committee, together with a available information and documen and a recommendation of the action t be taken.

§ 200.228 Determination by the Revie Committee.

(a) The Review Committee sha make one of the following determina tions in connection with every case re ferred to it by the Participation Con trol Officer:

(1) Approve the principal after con sideration of the entire record in th light of the standards in § 200.230. Al mitigating or extenuating factors wil be considered. In each case, the deci sion shall be within the discretion o the Review Committee and rendered in the best interest of the Governmen and the public;

(2) Conditionally approve the princi pal's participation with such condi tions or limitations which in the Review Committee's judgment are necessary to make the principal ap provable;

(3) Withhold approval of the princi pal in accordance with § 200.229; or

(4) Disapprove the principal when approval is not justified and withhold ing approval is not appropriate.

(b) All determinations by the Review Committee shall be made by majority vote of those members present and en titled to vote.

§ 200.229 Withholding approval.

Approval of a principal may be with held for:

(a) A period not to exceed 120 days when such action is deemed necessary to secure additional information upon which to base a final action including a determination as to whether a sus pension or debarment action will be taken; or

(b) For a longer period pending the resolution of a criminal complaint or indictment.

§ 200.230 Standards for disapproval.

The standards for disapproval shall be as follows:

(a) Suspension, debarment or other restriction of the principal under Part 24 of this title;

(b) Suspension, debarment or other restriction of the principal by any other Department or Agency of the Federal Government from doing business with such Department or Agency;

(c) Unless the Review Committee finds mitigating or extenuating circumstances that enables it to make an intelligent risk determination for approval, any of the following occurrences attributable or legally imputable to the fault or neglect of a principal may be the basis for disapproval whether or not the principal was actively involved in the project:

(1) Mortgage defaults, or assignments, or foreclosures for which principal was wholly or partially responsible;

(2) Defaults or noncompliance under any conventional construction contract or turnkey contract of sale in connection with a public housing project;

(3) Violation of the regulatory agreement or noncompliance with any other obligation to HUD that has not been corrected to the satisfaction of the Review Committee at the time of its consideration;

(4) Suspension or termination of payments under any HUD assistance contract;

(5) Defaults under an obligation covered by a surety or performance bond and/or claims under an employee fidelity bond;

(6) Unresolved findings as a result of HUD or other governmental audits or investigations; or

(7) A criminal record or other evidence that the principal's previous conduct or method of doing business has been such that his participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency;

(d) With respect to any HUD insured or assisted projects, work stoppage for a period in excess of 20 days, or in the case of an insured project, failure to achieve final endorsement of the mortgage where the project has been substantially completed for more than 90 days but documents for closing, including cost certification have not been filed with HUD and such is chargeable to the fault or neglect of the principal;

(e) Any serious and significant violation by a management agent of a project management contract, where the contract required HUD or other Governmental agency approval at its inception;

(f) Any other significant violation of or noncompliance with regulations, or programs or contract requirements of HUD, Farmers Home Administration or a State or local government's Housing Finance Agency in connection with any insured or assisted project.

§ 200.233 Effect and requirement of approval.

Approval is required as a precondition for participation and constitutes clearance of the principal under this part for participation only for a specific project in a specific role. Approval of a principal does not obligate the Department to approve the principal's applications or contracts for program participation.

§ 200.236 Modification or withdrawal of certain approvals.

Approvals will not be modified or withdrawn except in cases where the principal is subsequently suspended or debarred from further participation in any HUD programs under Part 24 of this title, or is found by the Review Committee to have obtained approval based upon submission of a false, fraudulent or incomplete report or certificate submitted to HUD. In such cases the Review Committee may take such action, including modification or withdrawal of approval, as it determines to be in the best interest of the Department and the public. For the purpose of this section, the term approval includes conditional approval.

§ 200.239 Notice of determination.

The Participation Control Officer shall give written notice to the principal and to the field office concerned of disapproval under § 200.226, and condi-

tional approval, withholding of approval or disapproval by the Review Committee under § 200.228. In the case of any such adverse notice:

(a) The notice shall contain a general statement of the reasons for the determination; and

(b) The notice to the principal shall be sent by certified mail to the address shown on the certificate with a return receipt requested.

§ 200.241 Request for reconsideration of an adverse determination and request for a hearing.

(a) Where approval has been withheld, denied, or conditionally granted, the principal may request reconsideration by the Review Committee. Such request shall be made in writing, within 30 days of receipt of the notice of such action, addressed to the Review Committee. It may contain such supporting material as principal desires; or

(b) The principal may file a request for a hearing before a Hearing Officer as provided in § 200.243. Such request for a hearing shall be made in writing within 30 days from the date of receipt of the determination.

§ 200.243 Hearing rules—How and when to apply.

(a) A principal whose request for reconsideration has resulted in an adverse determination by the Review Committee or who is disapproved by the Participation Control Officer may request a hearing before a Hearing Officer in accordance with 24 CFR Part 24. Such request must be made within 30 days from the date of receipt of the notice of the Review Committee's determination. The requirement in § 24.7 of this title that a request for a hearing must be made within 10 days shall not apply to requests for a hearing under this section or under § 200.241;

(b) Hearings and review of determination by the Hearing Officer shall be governed by the procedures contained in Part 24 of this title except as modified in paragraph (a) of this section and by § 200.245.

§ 200.245 Hearing Officer determines f and law: Review Committee m final administrative decision.

The Hearing Officer will determ the facts and the law relevant to issues and will report the determi tion in writing to the Review Comm tee and to the principal. The Rev Committee shall be bound by Hearing Officer's findings of facts law and will make a final decis based upon its application of the u form underwriting and risk evaluat standards contained in this part. will notify principal of the final act taken.

Subpart I—Nondiscrimination and Fair Housing

§ 200.300 Nondiscrimination and f housing policy.

The regulations in this subpart prescribed pursuant to the provisio of Executive Order 11063, issued the President under date of Novemb 20, 1962, and title VI of the Ci Rights Act of 1964 and title VIII the Civil Rights Act of 1968 prohib ing discrimination and providing f fair housing and directing the Sec tary to administer Housing and Urb Development programs and activiti in a manner affirmatively to furth these policies.

§ 200.305 Notice to public.

Participants in insurance progra of the Federal Housing Administratio shall be informed of the establish policy on nondiscrimination and equ opportunity in housing and in grou practice facilities through all appr priate means and as early as possib in their negotiations or upon indica ing interest in the sponsorship or f nancing of housing, related facilitie and group practice facilities.

§ 200.310 Definition of "discriminator practice".

As used in this subpart, the ter "discriminatory practice" shall mea any discrimination because of rac color, creed, or national origin in lend ing practices or in the sale, rental, o other disposition of residential proper ty or related facilities and group prac

tice facilities, or in the use or occupancy thereof, if:

(a) Such property is or will be constructed, rehabilitated, purchased or financed with the proceeds of a loan or investment insured under the provisions of the National Housing Act pursuant to an application for mortgage insurance received by the Commissioner after November 20, 1962; or

(b) Such property is offered for sale under terms which include financing under the provisions of the National Housing Act pursuant to an application for mortgage insurance received by the Commissioner after November 20, 1962; or

(c) Such property is improved with a loan reported for insurance under Title I of the National Housing Act, the proceeds of which are disbursed after November 20, 1962; or

(d) Such property is owned by the Federal Housing Administration.

§ 200.315 Prohibition against discriminatory practice.

No person, firm, or other entity receiving the benefits of Federal Housing Administration mortgage insurance or doing business with the Federal Housing Administration shall engage in a "discriminatory practice" as such term is defined in this subpart.

§ 200.320 Subdivision report and multifamily, land development, and group practice facilities preapplication analysis.

All requests for a subdivision report under home mortgage procedures or requests for preapplication analysis of multifamily, land development, and of group practice facilities projects, shall be accompanied by a statement of the applicant in which he agrees to comply with the regulations in this subpart. The statement shall be in a form satisfactory to the Commissioner.

§ 200.325 Corporate charters and regulatory agreements.

Corporate charters, regulatory agreements, and other instruments relating to multifamily, land development and group practice facilities projects, insured pursuant to applications received after November 20, 1962, under which the Commissioner exercises controls over rentals or methods of operation of mortgagors participating in the programs of the Federal Housing Administration shall contain provisions requiring compliance with the regulations in this subpart.

§ 200.335 Provisions in legal instruments.

Contracts and other instruments of the nature described in §§ 200.310 through 200.330 shall contain provisions to the effect that failure or refusal to comply with the regulations in this subpart shall be a proper basis for future rejection of applications and refusal by the Federal Housing Administration to enter into contracts with or insure loans involving persons, firms or other entities identified with such failure and refusal.

§ 200.340 Complaints and hearings.

(a) Upon receipt of a written complaint signed by the complainant to the effect that any person, firm or other entity has engaged in a discriminatory practice, such person, firm or other entity shall be invited to discuss the matter in an informal hearing with the Field Office Director or his designee having jurisdiction.

(b) If the existence of a discriminatory practice is denied by the person, firm or other entity against which a complaint has been made, the Field Office Director or his designee shall conduct such inquiries and hearings as may be deemed appropriate for the purpose of ascertaining the facts.

(c) If it is found that the person, firm or other entity against which a complaint has been made has not engaged in a discriminatory practice, the parties concerned shall be so notified.

(d) If it is found that there has been a violation of the regulations in this subpart, the person, firm or other entity in violation shall be requested to attend a conference for the purpose of discussing the matter. Failure or refusal to attend such a conference shall be proper basis for the application of sanctions.

(e) The conference arranged for discussing a violation shall be conducted in an informal manner and shall have

as its primary objective the elimination of the discriminatory practice. If such practice is eliminated and satisfactory assurances are received that the person, firm or other entity in violation will not engage in such practices in the future, the parties concerned shall be so notified.

§ 200.345 Sanctions.

Failure or refusal to eliminate a discriminatory practice or to give satisfactory assurances of future compliance with the requirements of this subpart shall be proper basis for applying sanctions. In the case of discrimination involving lending practices, the sanction may include the withdrawal of the lender's approval as a mortgagee. In other cases the sanctions may take the form of placing the offender's name on an ineligible list. Applications for mortgage insurance shall be rejected as ineligible if any person, firm or other entity included on the ineligible list is identified in any manner with the proposed transaction.

§ 200.350 Appeals from findings of Field Office Directors.

Upon written application, a complainant or a person, firm or other entity against which a complaint has been filed under the regulations may apply to the Commissioner for a rehearing or a readjudication of the action taken by the Field Office Director. Upon receiving such application, the Commissioner may designate a representative to conduct a hearing and to make a report of findings. The Commissioner may, after a review of the record on appeal, reverse an action taken by the Field Office Director.

§ 200.355 Reinstatement.

Reinstatement of restricted persons, firms or other entities shall be within the discretion of the Commissioner and under such conditions as he may prescribe.

Subpart J—Equal Employment Opportunity

§ 200.400 Purpose.

The purpose of this subpart is assist in achieving the aims of Part of Executive Order 11246 and the re vant regulations of the Secretary Labor and the Secretary of Housi and Urban Development.

§ 200.405 Notice to public.

Participants in insurance progra under the National Housing Act sh be informed, as early as possible up indicating their interest in any su program, of the established policy nondiscrimination in employment construction, repair or rehabilitatio work financed with assistance und the Act.

§ 200.410 Definition of term "applicant".

(a) In any mortgage or loan insu ance transaction under this chapte where the Commissioner will contro the mortgagor either through th ownership of corporate stock or unde the provisions of a regulatory agree ment, the term "applicant" as used i § 200.415 shall mean the mortgagor.

(b) In any transaction other than one specified in paragraph (a) of this section, the term "applicant" as used in § 200.415 shall mean the developer, or the builder, dealer or contractor performing the construction, repair or rehabilitation work for the property owner.

§ 200.415 Agreement of applicant.

An applicant shall, prior to the Commissioner's issuance of any commitment or other loan approval, agree (in a form prescribed by the Commissioner) that there shall be no discrimination against anyone who is employed in carrying out work receiving assistance pursuant to this chapter, or against an applicant for such employment, because of race, color, religion, sex or national origin.

§ 200.420 Equal opportunity clause to be included in contracts and subcontracts.

(a) The equal opportunity clause prescribed by the Commissioner pursuant to the regulations of the Secre-

tary of Labor (41 CFR Chapter 60) shall be included in each nonexempt contract and subcontract for work receiving FHA assistance.

(b) Subcontracts less than $50,000 may incorporate by reference the equal opportunity clause.

(c) The equal opportunity clause shall be deemed to be a part of each nonexempt contract or subcontract whether or not it is physically incorporated in such contract.

§ 200.425 Exemptions.

(a) *Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000 are exempt from the requirements of the equal opportunity clause. No contractor or subcontractor shall procure supplies or services in less than usual quantities to avoid applicability of the equal opportunity clause.

(b) *Contracts and subcontracts for indefinite quantities.* Contracts and subcontracts for indefinite quantities are exempt from the requirements of the equal opportunity clause if the amount to be ordered in a single year under any such contract will not exceed $10,000.

(c) *Work outside the United States.* Contracts and subcontracts with regard to work performed outside the United States by employees who were not recruited within the United States are exempt from the requirements of the equal opportunity clause.

(d) *Others.* Other exemptions set forth in the regulations of the Secretary of Labor at 41 CFR 60-1.5 apply to transactions under this subpart.

§ 200.430 Sanctions.

Failure or refusal to comply and give satisfactory assurances of future compliance with the requirements of this subpart shall be proper basis for applying sanctions. The sanctions shall be applied in accordance with the provisions of Executive Order 11246 and the relevant regulations of the Secretary of Labor.

Subpart K—Correction of Structural Defects

§ 200.500 Purpose.

The purpose of this subpart is to specify the terms, conditions, and types of assistance that the Federal Housing Administration will render to an eligible mortgagor who has been unable to secure satisfactory reconstruction or replacement of structural defects in his property.

§ 200.502 Application for assistance.

An application for assistance in the correction of structural defects, in form satisfactory to the Commissioner, shall be filed by a mortgagor under an FHA-insured mortgage with the Field Office Director having jurisdiction over the area in which the property is located. The application shall be filed not later than four years after the date of the first mortgage insurance certificate issued in connection with the property. A mortgagor under a new FHA mortgage on the same property shall be entitled to file an application if it is filed within the same four-year period following the date of the first insured mortgage certificate.

§ 200.505 Nature of defect.

Assistance in the correction of structural defects shall be available only in connection with a structural defect in the property which the Commissioner has determined to be of such a nature as to seriously affect the livability of the property. Such assistance shall not be available where the defect occurs as a result of fire, earthquake, flood, tornado, or waste.

§ 200.507 Eligibility requirements.

To be eligible for consideration by the Commissioner for receiving assistance in the correction of structural defects, the mortgagor must establish that:

(a) The mortgagor is the owner of a one- to four-family dwelling covered by an individual mortgage.

(b) The dwelling was approved for mortgage insurance by the Commissioner, or for guaranty, insurance or a direct loan under chapter 37 of Title 38 of the United States Code (38

U.S.C. 1801–1827) by the Secretary of Veterans Affairs, before the beginning of construction.

(c) The mortgagor has made reasonable efforts to obtain a correction of a structural defect in his or her property by the builder, seller, or other persons, and that the defect has not been corrected.

[49 FR 12696, Mar. 30, 1984, as amended at 54 FR 39525, Sept. 27, 1989]

§ 200.510 Type of assistance.

The type of assistance in the correction of structural defects to be rendered a mortgagor who establishes eligibility shall be determined by the Commissioner. In those cases where the Commissioner determines it is appropriate and necessary, he may take any of the actions as follows:

(a) Pay expenses in connection with having the defect corrected.

(b) Pay the claim of the mortgagor for corrected damages to the property arising out of such defect.

(c) Acquire title to the property with the approval of the mortgagor and under such terms and conditions as are satisfactory to the mortgagor.

§ 200.512 Subrogation by mortgagor.

Where the Commissioner has taken action as provided in § 200.510, any legal rights the mortgagor may have against the builder, seller, or other persons, arising out of the defect in his property shall be assigned and set over to the Commissioner.

§ 200.515 Right and finality of determination.

The mortgagor shall not be entitled, as a matter of right, to receive the assistance in the correction of structural defects provided in this subpart. Any determination made by the Commissioner in connection with a mortgagor's application for assistance shall be final and conclusive and shall not be subject to judicial review.

Subpart L—Correction of Struc Defects in Homes Covered Mortgage Insurance Under tion 203, 221 or 235

§ 200.517 Purpose.

The purpose of this subpart specify the terms and conditions u which the Secretary will conside fording assistance to mortga under sections 518(b) and 518(d) o National Housing Act.

[40 FR 8948, Mar. 4, 1975, as amended FR 42185, Sept. 27, 1976]

§ 200.520 Application for assistance.

An application for assistance in correction of defects, in a form s factory to the Secretary, shall be f by or on behalf of an eligible mor gor with the Area or Insuring Of Director having jurisdiction over area in which the property is loca

(a) In the case of a dwelling cove by a mortgage insured under sect 235 of the National Housing Act, application shall be filed not la than one year after the insurance the mortgage.

(b) In the case of a dwelling loca in an older declining urban area s covered by a mortgage insured un section 203 or 221 of the Natio Housing Act on or after August 1968, but prior to January 1, 1973, t application shall be filed not la than December 3, 1976.

(c) In the case of a dwelling locat in an older declining urban area a covered by a mortgage insured und section 203 or 221 of the Nation Housing Act on or after January 1973, but prior to August 3, 1976, t application shall be filed not lat than August 3, 1977.

[41 FR 42185, Sept. 27, 1976]

§ 200.522 Eligibility for consideration.

The Secretary will consider a mor gagor eligible for assistance under th subpart if the Secretary finds th each of the following requirements fulfilled:

(a) The person applying for assis ance is the owner and mortgagor of one or two family dwelling covered b a mortgage insured under Section 23

of the National Housing Act pursuant to a mortgage insurance commitment issued when such dwelling was more than 1 year old; or, in the case of a dwelling located in an older, declining urban area, the applicant is the owner and mortgagor of a one, two, three or four family dwelling covered by a mortgage insured under Section 203 or 221 of the National Housing Act on or after August 1, 1968, but prior to August 3, 1976, pursuant to a mortgage insurance commitment issued when such dwelling was more than 1 year old.

(b) One or more structural or other defects existed in such dwelling on the date of the issuance of the mortgage insurance commitment which: (1) So seriously affect use and livability as to create a serious danger to the life or safety of the inhabitants of such dwelling, and (2) were of such a nature that a proper inspection could reasonably be expected to have disclosed them; and

(c) The application for assistance was filed in accordance with the provisions of this subpart.

[41 FR 42185, Sept. 27, 1976]

§ 200.527 Consideration for assistance.

Upon a finding by the Secretary that a mortgagor is eligible to be considered for assistance under this subpart, the Secretary will, in his sole discretion, determine whether to afford assistance hereunder by direct expenditures to correct defects as defined in § 200.522(b), compensation of a mortgagor who has made such expenditures himself, or a combination of both direct expenditures and compensation of the mortgagor. The Secretary, in determining the form of assistance and when it will be afforded, will consider:

(a) Whether the defects so seriously affect use and livability as to create a serious danger to the life or safety of the inhabitants;

(b) The availability of funds from which the Secretary is authorized to make expenditures hereunder; and

(c) Such other matters as he deems material.

[36 FR 24467, Dec. 22, 1971, as amended at 38 FR 25994, Sept. 17, 1973; 40 FR 8948, Mar. 4, 1975]

§ 200.533 Right and finality of determination.

All decisions of the Secretary with respect to assistance under this subpart are final and conclusive and not subject to judicial review.

Subpart M—Affirmative Fair Housing Marketing Regulations

SOURCE: 37 FR 75, Jan. 5, 1972, unless otherwise noted.

§ 200.600 Purpose.

The purpose of this subpart is to set forth the Department's equal opportunity regulations for affirmative fair housing marketing under FHA subsidized and unsubsidized housing programs.

§ 200.605 Authority.

The regulations in this subpart are issued pursuant to the authority to issue regulations granted to the Secretary by section 7(d) of the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3535(d), and implement the functions, powers, and duties imposed on the Secretary by Executive Order 11063, 27 FR 11527, and Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3608.

[40 FR 20080, May 8, 1975]

§ 200.610 Policy.

It is the policy of the Department to administer its FHA housing programs affirmatively, as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, or national origin. Each applicant for participation in FHA subsidized and unsubsidized housing programs shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions.

[40 FR 20080 May 8, 1975]

§ 200.615 Applicability.

The affirmative fair housing marketing requirements, as set forth in paragraphs (a) through (f) of § 200.620, shall apply to all applicants for participation in FHA subsidized and unsubsidized housing programs whose application is hereafter approved for development or rehabilitation of:

(a) Subdivisions, multifamily projects and manufactured home parks of five or more lots, units or spaces; or

(b) Dwelling units, when the applicant's participation in FHA housing programs had exceeded or would thereby exceed development of five or more such dwelling units during the year preceding the application, except that there shall not be included in a determination of the number of dwelling units developed by an applicant those in which a single family dwelling is constructed or rehabilitated for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation.

[37 FR 75, Jan. 5, 1972, as amended at 50 FR 9268, Mar. 7, 1985]

§ 200.620 Requirements.

With respect to all FHA subsidized or unsubsidized programs in which the applicant hereafter participates (except for housing for which a conditional commitment has been issued prior to the effective date of these regulations), the applicant shall meet the following requirements or, if he contracts marketing responsibility to another party, be responsible for that party's carrying out the requirements:

(a) Carry out an affirmative program to attract buyers or tenants, regardless of sex, of all minority and majority groups to the housing for initial sale or rental. An affirmative marketing program shall be in effect for each multifamily project throughout the life of the mortgage. Such a program shall typically involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex or national origin, through the type of media customarily utilized by the applicant, including minority publications or other minority outlets which are available in the housing market area. All advertising shall include either the Department-approved Equal Housing Opportunity logo or slogan or statement and all advertising depicting persons shall depict persons of majority and minority groups, including both sexes.

(b) Maintain a nondiscriminatory hiring policy in recruiting from both minority and majority groups, including both sexes, for staff engaged in the sale or rental of properties.

(c) Instruct all employees and agents in writing and orally in the policy of nondiscrimination and fair housing.

(d) Specifically solicit eligible buyers or tenants reported to the applicant by the Area or Insuring Office.

(e) Prominently display in all offices in which sale or rental activity pertaining to the project or subdivision takes place the Department-approved Fair Housing Poster and include in any printed material used in connection with sales or rentals, the Department-approved Equal Housing Opportunity logo or slogan or statement.

(f) Post in a conspicuous position on all FHA project sites a sign displaying prominently either the Department-approved Equal Housing Opportunity logo or slogan or statement.

[37 FR 75, Jan. 5, 1972, as amended at 40 FR 20080, May 8, 1975; 40 FR 53008, Nov. 14, 1975]

§ 200.625 Affirmative fair housing marketing plan.

Each applicant for participation in FHA housing programs to which these regulations apply shall provide on a form to be supplied by the Department information indicating his affirmative fair housing marketing plan to comply with the requirements set forth in § 200.620. This form, once approved by HUD, will be available for public inspection at the sales or rental offices of the applicant.

§ 200.630 Notice of housing opportunities.

The Director of each Area and Insuring Office shall prepare monthly a list of all projects and subdivisions covered by this subpart on which commitments have been issued during the preceding 30 days. The Director shall

aintain a roster of interested organiations and individuals, including ublic agencies responsible for providg relocation assistance and local ousing authorities, desiring to receive ie monthly list and shall provide the st to them.

200.635 Compliance.

Applicants failing to comply with ie requirements of this subpart will ake themselves liable to sanctions uthorized by regulations, rules or olicies governing the program pursuit to which the application was ade, including but not limited to enial of further participation in dertmental programs and referral to ie Department of Justice for suit by ie United States for injunctive or her appropriate relief.

200.640 Effect on other requirements.

The requirement for compliance ith this part is in addition to and not substitution for any other requirements imposed by or under Executive rder 11063 or Title VIII of the Civil ights Act of 1968, as amended.

0 FR 20080, May 8, 1975]

APPENDIX TO SUBPART M—EQUAL HOUSING OPPORTUNITY INSIGNIA

The Equal Housing Opportunity insignia e as follows:

Equal Housing Opportunity logo:

EQUAL HOUSING OPPORTUNITY

Equal Housing Opportunity statement: "We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin."

Equal Housing Opportunity slogan: "Equal Housing Opportunity."

[37 FR 75, Jan. 5, 1972, as amended at 40 FR 20080, May 8, 1975]

Subpart N—Project Selection Criteria

§ 200.700 Purpose.

The purpose of this subpart is to set forth the project selection criteria to be used in evaluating: (a) Requests for priority registration and reservation of contract authority for projects under section 235(i) of the National Housing Act; (b) requests for early feasibility and reservation of contract authority for projects under section 236 of the Act; (c) requests for reservation of contract authority for rent supplement projects.

[37 FR 205, Jan. 7, 1972, as amended at 46 FR 2344, Jan. 9, 1981]

§ 200.705 Authority.

The regulations in this subpart are issued pursuant to section 7(d) of the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3535(d), sections 235(i) and 236 of the National Housing Act (12 U.S.C. 1715z(i) and 1715z-1). They implement Executive Order 11063, 27 FR 11527; title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3608; and the Department of Housing and Urban Development regulations approved by the President under title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, in Part 1 of this title.

[37 FR 205, Jan. 7, 1972, as amended at 46 FR 2344, Jan. 9, 1981]

§ 200.710 Requests for priority registration, early feasibility, or reservation of contract authority for section 235(i), rent supplement, or section 236 projects.

A request for priority registration, early feasibility, or reservation of con-

40-079 O—90——3

tract authority for section 235(i), rent supplement or section 236 projects shall be evaluated and processed in accordance with the following Evaluation of Requests:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FEDERAL HOUSING ADMINISTRATION

Evaluation of requests for priority registration, early feasibility, reservation of contract authority (section 235(i), rent supplement, section 236).

☐ 235(i) ☐ 221d3 rent supplement ☐ 236 ☐ rent supplement

Sponsorship: ☐ Profit ☐ Nonprofit ☐ Lim. Div.

☐ Priority registration ☐ Early feasibility ☐ Reservation

Area or insuring *office* _____

_____

Applicant (name and address) _____

_____

Census tract (where available) _____

_____

Date of initial application _____

_____

Identification of subdivision/location of proposed project _____

_____

Case or application number _____

_____

General instructions: In evaluating proposals involving five (5) or more dwelling units, the Area or Insuring Office shall utilize the following Project Selection Criteria. Enter a brief explanation on the lines provided of the way in which the proposal satisfies each applicable consideration, so that the factual basis for the evaluation and rating assigned is clear. Attach supporting documentation and extra sheet(s), if necessary for a complete explanation. Evaluate each criterion by checking the appropriate box—Superior, Adequate, or Poor.

Final feasibility approval is dependent upon satisfying all statutory and administrative requirements which are a normal part of processing. Rehabilitation projects, section 235 existing housing, and proposed construction project of fewer than five (5) dwelling units are excluded.

1. *Need for low(er) income housing* ☐ Superior ☐ Adequate ☐ Poor

Objective: To identify the proposed projects which will best serve the most urgent unmet needs for housing for low(er) income households.

(A) A *superior* rating shall be given to a proposed project:

(1) Which responds well to the most urgent housing needs of low(er) income households in the market area in terms of number of bedrooms and structure type; or,

_____

_____

_____

_____

_____

_____

(2) As to which there is documented evidence that the housing is needed as a relocation resource to serve families displaced or to be displaced by governmental action, including families or individuals being displaced by the proposed project, and that the applicant will give preference to those so displaced _____

_____

_____

_____

(B) An *adequate* rating shall be given to a proposed project which responds to housing needs of low(er) income households in the market area in terms of number of bedrooms and structure type _____

_____

_____

_____

_____

(C) A *poor* rating shall be given to a proposed project which:

(1) Does not respond to housing needs of low(er) income households in the market area; *or,* _____

_____

_____

_____

_____

(2) Duplicates or competes unreasonably with other subsidized or comparably-priced, standard unsubsidized housing projects in the same locality in such a way as to overbuild the market _____

. *Minority Housing opportunities* ☐ Supe-
r ☐ Adequate ☐ Poor

jectives:

To provide minority families with oppor-
nities for housing in a wide range of loca-
ns

To open up nonsegregated housing oppor-
nities that will contribute to decreasing
e effects of past housing discrimination.

A) A *superior* rating shall be given if the
posed project will be located:

1) So that, within the housing market
a, it will provide opportunities for mi-
rities for housing outside existing areas of
nority concentration and outside areas
ich are already substantially racially
xed; *or,* ——

2) In an area of minority concentration,
the area is part of an official State or
al agency development plan, and suffi-
nt, comparable opportunities exist for
using for minority families, in the income
ge to be served by the proposed project,
side areas of minority concentration ——

B) An *adequate* rating shall be given if
proposed project will be located:

1) Outside an area of minority concentra-
n, but the area is racially mixed, and the
posed project will not cause a significant
rease in the proportion of minority to
minority residents in the area; *or,* ——

(2) In an area of minority concentration and sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration; *or,* ——

(3) In an area of minority concentration, but is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. (An "overriding need" may not serve as the basis for an "adequate" rating if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, or national origin renders sites outside areas of minority concentration unavailable); *or,* ——

(4) In a housing market area with few or no minority group residents ——

All "superior" and "adequate" ratings shall be accompanied by documented findings based upon relevant racial, socioeconomic, and other data and information.

(C) A *poor* rating shall be given if the proposed project does not satisfy any of the above conditions, e.g., will cause a significant increase in the proportion of minority residents in an area which is not one of minority concentration, but which is racially mixed ——

3. *Improved location for low(er) income families* ☐ Superior ☐ Adequate ☐ Poor

Objectives:

To avoid concentrating subsidized housing in any one section of a metropolitan area or town.

To provide low(er) income households with opportunities for housing in a wide range of locations.

To locate subsidized housing in sections containing facilities and services that are typical of those found in neighborhoods consisting largely of standard, unsubsidized housing of a similar market value.

To locate subsidized housing in areas reasonably accessible to job opportunities.

(A) A *superior* rating shall be given if the proposed project:

(1) Will be located in a section (consisting of the project neighborhood and contiguous neighborhoods) that contains little or no federally-subsidized housing and (a) the proposed project is, or will be by the occupancy date or very shortly thereafter, accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal services that are equivalent to or better than those typically found in neighborhoods consisting largely of standard, unsubsidized housing of a similar market value, and (b) travel time and cost via public transportation or private auto from the neighborhood to employment providing a range of jobs for low(er) income workers is considered excellent for such families in the metropolitan area or town. (While it is important that elderly housing not be totally isolated from all employment opportunities, for such projects the requirements of (b) above need not be adhered to rigidly); *or,* _____

(2) Is part of a New Community Development Plan approved under Title VII of the Housing and Urban Development Act of 1970 _____

(B) An *adequate* rating shall be given to a proposed project which will be located:

(1) In a section already containing federally-subsidized housing if, with the addition of the proposed housing, the resulting number of federally-subsidized units will not establish the character of the section as one of subsidized housing and the housing will provide an expanded range of housing opportunity for low(er) income families; *or,* _____

(2) In an undeveloped area, but the scale of the project will not be such that it establishes the character of the section as one of subsidized housing; _____

(3) *And,* in the event of either (1) or (2): (a) The project is, or will be by the occupancy date or very shortly thereafter, accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal services that are equivalent to those typically found in neighborhoods consisting largely of unsubsidized standard housing of a similar market value, and (b) traveltime and cost via public transportation or private auto from the neighborhood to employment providing a range of jobs for low(er) income workers is reasonable for such families in the metropolitan area or town. (While it is important that elderly housing not be totally isolated from all employment opportunities, for such projects the requirements of (b) above need not be adhered to rigidly), *or,* _____

(4) In an Urban Renewal or Model Cities area and such housing is required to fulfill respectively, the Urban Renewal Plan or the Comprehensive City Demonstration Program ——

(C) A *poor* rating shall be given if:

(1) The proposed project will be located in a section characterized as one of subsidized housing; *or,* ——

(2) The proposed project will establish the character of the section as one of subsidized housing; *or,* ——

(3) Social, recreational, educational, commercial, and health facilities and services, and other municipal services: (a) are not, or will not be by the occupancy date or very shortly thereafter, accessible to the project; *or* (b) although accessible to the project, are inferior to those generally found in neighborhoods consisting largely of standard, unsubsidized housing of a similar market value; *or,* ——

(4) Travel time and cost via public transportation or private auto from the neighborhood to employment providing a range of jobs for low(er) income workers will be appreciably greater than that usually required in the metropolitan area or town. ——

4. *Relationship to orderly growth and development* ☐ Superior ☐ Adequate ☐ Poor

Objectives:

To assure that the proposed development is consistent with principles of orderly growth and development.

To prevent urban sprawl and the premature development or overdevelopment of land before supporting facilities are available.

To develop housing consistent with officially approved State or multijurisdictional plans

To encourage formulation of area-wide plans which include a housing element relative to needs and goals for low- and moderate-income housing as well as balanced production throughout a metropolitan area.

(A) A *superior* rating shall be given if the proposed project:

(1) Will be consistent with the housing element of a local, officially-approved land use or other development plan which is consistent with metropolitan or regional plans (zoning alone does not constitute an officially-approved land use or other development plan); *or* ——

(2) Will be located in and be consistent with plans for a neighborhood that is undergoing improvement via Urban Renewal, Model Cities, New Communities or other similar Federal State, or local development programs; *or,* ——

(3) Is consistent with a policy adopted by a State housing or metropolitan areawide development agency or the local governing body (especially where this policy implements a multijurisdictional approach) for providing for and dispersing housing for low- and moderate-income families ———

(B) An *adequate* rating shall be given if the proposed project:

(1) Is consistent with a local, officially-approved land use or development plan; *or,* ——

(2) Is consistent with sound growth patterns, although located in a community that does not have officially-approved land use or other development plans ———

(C) A *poor* rating shall be given if the proposed project:

(1) Does not satisfy any of the above conditions; *or,* ———

(2) Is contrary to sound growth patterns —

5. *Relationship of proposed project to physical environment* ☐ Superior ☐ Adequate ☐ Poor

Objectives:

To provide an attractive and well-planned physical environment.

To prevent any adverse impact on the environment resulting from construction of the proposed housing.

To avoid site locations whose environmental conditions would be detrimental to the success of an otherwise sound project.

(A) A *superior* rating shall be given if the proposed housing will:

(1) Embody outstanding land use planning and excellent architectural treatment, *and*

(2) Be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank backups, sewage hazards, or mudslide; harmful air pollution, smoke or dust; excessive noise, vibration, or vehicular traffic; unsanitary rodent or vermin infestation; or dangerous fire hazards; *and,* ———

(3) Not, considering both long-term and short-term effects, impact or impair ecologically valuable or significant natural areas, such as wildlife areas, ground water or surface water areas, and parklands, or significant historical or archeological areas ———

(B) An *adequate* rating shall be given if the proposed project will:

(1) Embody sound land use planning and good architectural treatment; *and* ———

(2) Be free from adverse environmental conditions that cannot be corrected; *and* ——

(3) Not have an unreasonably adverse impact on the environment ——

(C) A *poor* rating shall be given if the proposed project will:

(1) Embody poor land use planning *or* poor architectural treatment; *or,* ——

(2) Be subject to serious environmental conditions which cannot be corrected; *or,* —

(3) Will substantially or unreasonably disrupt the environment or ecologically valuable or unique natural areas ——

6. *Ability to perform* ☐ Superior ☐ Adequate ☐ Poor

Objective: To produce housing promptly and to provide quality housing at a reasonable cost, taking into account Equal Opportunity guidelines and requirements.

(A) A *superior* rating shall be given if the applicant, his staff, or other personnel which he will utilize (including contractors, subcontractors, architects, consultants, etc.), and help he will receive, considered together, have demonstrated good ability in past performance (in either subsidized, unsubsidized, conventionally-financed developments or related fields). based on each of the following considerations: (a) Ability to perform well within program target dates; (b) high quality of housing produced; (c) ability to produce housing at a cost at or below similar units of comparable quality; (d) compliance with Equal Opportunity guidelines and requirements ——

(B) An *adequate* rating shall be given if the applicant, his staff, or other personnel which he will utilize (including contractors, subcontractors, architects, consultants, etc.), and help he will receive, considered together have demonstrated an acceptable ability in past performance (in either subsidized, unsubsidized, conventionally-financed developments or related fields), based on each of the following considerations: (a) Ability to meet program target dates; (b) good quality of housing produced; (c) ability to produce housing at a cost equivalent to that of similar units of comparable quality; (d) compliance with Equal Opportunity guidelines and requirements. In the case of an applicant without previous experience in housing or related fields, an adequate rating will be given if there is no demonstrable reason to believe that it will be unable to meet the above conditions ——

(C) A *poor* rating shall be given to any proposal which does not meet the above conditions ——

7. *Project potential for creating minority employment and business opportunities* ☐ Superior ☐ Adequate ☐ Poor

Objectives:

To encourage housing proposals which will generate job opportunities for minority workers.

To provide opportunities for business concerns owned in substantial part by minority persons.

(A) A *superior* rating will be given if the proposal shows good potential, based on the applicant's stated, specific goals, hiring timetables, and past performance, if any, for:

(1) Providing training and/or employment for minority persons; *and* ———

(2) Utilizing business concerns (including but not limited to the prime contractor) owned, controlled or managed in substantial part by minority persons. This potential may include training, employment and business opportunities in all phases of development including but not limited to planning, site development, building, maintenance, and management ———

(B) An *adequate* rating will be given if:

(1) The proposal has good potential, based on the above factors, for satisfying either of the two conditions set forth for a "superior" rating; *or,* ———

(2) The housing market area has no minority population or the area from which labor could feasibly be recruited and business concerns feasibly contracted has a minority population so low that it would be impossible for the applicant to achieve a "superior" or "adequate" rating ———

(C) A *poor* rating shall be given to a proposal which shows poor or no potential for satisfying any of the above conditions ———

8. *Provision for sound housing management*

Objective: To encourage the development of well-managed and well-maintained projects so as to significantly increase their potential for successful, long-term operation and to foster good relations between tenants and management and the surrounding community.

(A) A *superior* rating shall be given to a proposed project which: If submitted under the section 236 or Rent Supplement programs (a) Includes a management plan (based on "Management Plan Requirements"), which significantly exceeds present HUD requirements and guidelines in terms of the quality of management proposed and the services to be provided; *and* (b) has a sponsor and, if applicable management agent which have demonstrated, through past performance, superior: Maintenance policies, financial stability, tenant-management relations, and overall management practices (with due consideration for past performance in regard to avoiding defaults, need for mortgage payment relief or other significant problems);

(B) An *adequate* rating shall be given to a proposed project which: If submitted under the Section 236 or Rent Supplement programs, (a) includes a management plan (based on "Management Plan Requirements"), which meets current HUD requirements and guidelines in terms of the quality of management proposed and the services to be provided; and (b) has a sponsor and, if applicable, management agent which have demonstrated their ability or show potential for meeting project management requirements;

(C) A *poor* rating shall be given to any proposal project which does not meet any of the above requirements

SUMMARY OF RATINGS

[Priority group check only one box shown below representing the total number of ratings assigned on the form or *disapproval.* A Superior or Adequate rating is required for all criteria.]

Section 235(i) [1]				Rent supplement, section 236			
Priority group	Ratings			Priority group	Ratings		
	Superior	Adequate	Poor		Superior	Adequate	Poor
1. ☐	7	0	0	1. ☐	8	0	0
2. ☐	6	1	0	2. ☐	7	1	0
3. ☐	5	2	0	3. ☐	6	2	0
4. ☐	4	3	0	4. ☐	5	3	0
5. ☐	3	4	0	5. ☐	4	4	0
6. ☐	2	5	0	6. ☐	3	5	0
7. ☐	1	6	0	7. ☐	2	6	0
8. ☐	0	7	0	8. ☐	1	7	0
				9. ☐		0	8

☐ Disapproval. A *Poor* rating on any criterion.
[1] Criterion 8 (Management) is not applicable to Section 235.

NOTE: Proposals shall be evaluated when received and shall not be stockpiled unreasonably. After rating has been assigned above, proposals in priority group 1 shall be funded ahead of those in priority group 2, proposals in priority group 2 shall be funded ahead of those in group 3, and so on. Within each group, proposals shall be funded in order of date of receipt of applications suitable for processing.

EVALUATION PREPARED BY

(Date) (Name and title)

The above ratings have been assigned with my approval. (Date) Director, Operations Division Area Office or Chief Underwriter, Insuring Office.

[37 FR 205, Jan. 7, 1972, as amended at 46 FR 2344, Jan. 9, 1981]

Subpart O—Lead-Based Paint Poisoning Prevention

§ 200.800 Purpose and applicability.

The purpose of this subpart is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4186, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing within the coverage hereinafter described. This subpart is promulgated under the au-

thorization granted in 24 CFR 35.24(b)(4), and it supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. Any housing assisted under the programs set out in this Part 200 for which no new activity is applied for or required is not covered by this Subpart nor by Subpart C of Part 35. The requirements of Subpart A of 24 CFR Part 35 apply to all housing constructed prior to 1978 and covered by this subpart.

[52 FR 1891, Jan. 15, 1987]

§ 200.805 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

HUD-owned properties. Properties with residential units to which HUD acquired title, or any Federally-owned properties for which HUD has disposition responsibility and which are intended for residential habitation.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

Sale of HUD-owned properties. Any sale of federally-owned properties by HUD.

Use for residential habitation. The use of a property as a residential structure as defined in 24 CFR 35.3.

[52 FR 1891, Jan. 15, 1987, as amended at 53 FR 20799, June 6, 1988]

§ 200.810 Single family insurance and co insurance.

(a) *General.* The requirements of this section apply to any one- to four family dwelling which is the subject of an application for mortgage insurance under section 203(b) or other sections of the National Housing Act relating to the insurance or coinsurance of mortgages on one- to four-family dwellings. (Such other sections include sections 244 (coinsurance), 213 (cooperative housing insurance), 220 (rehabilitation and neighborhood conservation housing insurance), 221 (housing for moderate income and displaced families), 222 (mortgagor insurance for servicemen), 809 (armed services housing for civilian employees), 810 (armed services housing in impacted areas), 234 (mortgage insurance for condominiums), 235 (mortgage assistance payments for home ownership and project rehabilitation), 237 (special mortgage insurance for low and moderate income families), and 240 (mortgage insurance on loans for purchase of fee simple title from lessors).) Applications for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by the Commissioner are excluded from the coverage of this section.

(b) *Appraisal.* The fee panel appraiser or direct endorsement appraiser of a dwelling constructed prior to 1978 shall inspect the dwelling for defective paint surfaces. If a defective paint surface is found, the commitment or other approval document will contain the requirement that the surface is to be treated as described in paragraph (c) of this section. Treatment of the surface shall be accomplished before the mortgage is endorsed for insurance. Except in the case of rehabilitation work financed under section 203(k) of the National Housing Act and under certain weather conditions described below, when such a defective paint surface has been listed to be treated, no escrow procedure regarding that condition will be permitted. With respect to rehabilitation work financed under section 203(k), an escrow procedure is permitted provided that the defective paint condition will be

abated in conjunction with the rehabilitation work and will be completed as expeditiously as possible. When weather conditions prevent completion of repainting of exterior surfaces, repainting may be delayed and an escrow procedure is permitted; however, covering or removal of the defective paint must be completed within a reasonable period of time.

(c) *Abatement.* For defective paint surfaces, treatment shall be provided to defective areas. Treatment of hazards shall consist of covering or removing defective paint surfaces as described in 24 CFR 35.24(b)(2)(ii).

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion insurance) unless the mortgagor provides the certification described in § 206.45(d) of this chapter. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this chapter.

[36 FR 24467, Dec. 22, 1971, as amended at 53 FR 20799, June 6, 1988; 54 FR 24832, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

§ 200.815 HUD-owned single family property disposition.

(a) *General.* The requirements of this section apply to the sale of HUD-owned one- to four-family dwellings when their use is intended for residential habitation.

(b) *Defective paint surfaces.* For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before the closing of the sale of the property. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before the closing of the sale of the property. In the case of a sale to a non-owner occupant purchaser, treatment may be made a condition of sale, with sufficient sale funds escrowed to assure treatment.

(c) *Chewable surfaces.* This subsection applies to dwellings constructed prior to 1978. If the purchaser is an owner-occupant and the occupant family contains one or more children under the age of seven years, closing of the sale shall be deferred until completion of the following procedures. Where a blood lead level screening program is determined by HUD to be reasonably available, screening of each occupant child under the age of seven years will be required. If an EBL condition is identified, HUD will cause the dwelling to be tested for lead-based paint on chewable surfaces or follow treatment procedures. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, a qualified HUD inspector or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii).

(d) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section in the case of a residential structure constructed prior to 1978, HUD, at its option, may forgo testing and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

[52 FR 1891, Jan. 15, 1987; 52 FR 9828, Mar. 27, 1987, as amended at 53 FR 20799, June 6, 1988]

§ 200.820 Multifamily insurance and coinsurance.

(a) *General.* The requirements of this section apply to any existing property which is the subject of an application for mortgage insurance under sections 207 (including applications under section 207 pursuant to section 223(f)), 213, 220, 221 or 234 of the National Housing Act, including

applications for mortgage insurance under any of these sections pursuant to section 223(a)(7) of the National Housing Act. This section also applies to the applicat pursuant to section 223(f)), 213, 220, 221 or 234 of the National Housing Act, including applications for mortgage insurance under any of these sections pursuant to sectionon of an existing property. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age) or projects subject to an application for insurance under section 231, 232, 241 or 242 of the National Housing Act. The requirements of this section do not apply to 0-bedroom units. The requirements of paragraph (c) of this section apply to projects that have not received a conditional commitment for insurance on or before May 1, 1987.

(b) *Defective paint surfaces.* In the case of a residential structure constructed prior to 1978, the HUD or coinsurer's architect and the sponsor's architect shall inspect the property for defective paint surfaces before the issuance of a commitment. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before final endorsement as a condition of the firm commitment.

(c) *Chewable surfaces*—(1)(i) *Random sample.* In the case of a residential structure constructed prior to 1978 a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with twenty or more units, and six units shall be tested in projects with fewer than twenty units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include nondwelling facilities commonly used by children under seven years of age, such as child care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any unit in the sample, all units in the proje are required to be tested. If lead-bas paint is found in any common area, common areas in the project are r quired to be tested. If lead-based pai is found in any exterior applicable su face, all exterior applicable surfaces the project are required to be tested.

(ii) *EBL Child.* In the case of a res dential structure constructed prior t 1978, if the developer is presente with test results that indicate a chil seven years of age or younger living i a unit has an EBL the developer mus test the unit occupied by the child an if such test is positive for lead-base paint, abate the unit surfaces in ac cordance with the methods set out a 24 CFR 35.24(b)(2)(ii) or choose not t test, and abate all the unit surfaces.

(2) *Testing requirements.* Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a State or local health or housing agency or by an inspector certified or regulated by the State or local health or housing agency. The testing entity shall certify to the results of the test. The mortgagor shall be responsible for obtaining these testing services.

(3) *Treatment.* Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). After joint inspection and during the write-up stage, completion of abatement of defective paint surfaces and lead-based paint on chewable surfaces will be a special condition requirement in the commitment. The developer will be required to abate all defective paint surfaces and lead-based paint on chewable surfaces. HUD or the coinsuring lender will reinspect all units after repair and before final endorsements.

(4) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (c)(1)(i), (2) and (3) of this section, in the case of a residential structure constructed prior to 1978,

the developer may forego testing and abatement, and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) before final endorsement. HUD or the coinsuring lender will reinspect all units after repair and before final endorsement.

(d) *Tenant protection.* Owners shall take appropriate action as prescribed by the Commissioner to protect tenants from hazards associated with abatement procedures.

(e) *Monitoring and enforcement.* (1) For multifamily insurance programs, compliance with any rehabilitation requirement will utilize the standard construction compliance regulations (*e.g.*, 24 CFR 207.19(c)(6)) for the assurance of completion requirements for section 207 and the incomplete repair escrow requirement of section 223(f) for each program.

(2) For coinsurance, owner compliance with the requirements of this section shall be monitored by the approved coinsurance lender. Compliance with any requirements of this section shall also be enforced by the Assurance of Completion Agreement as provided under 24 CFR 251.402(d) or by escrow under 24 CFR 255.401(c).

[52 FR 1891, Jan. 15, 1987; 52 FR 9828, Mar. 27, 1987, as amended at 53 FR 20799, June 6, 1988]

§ 200.825 HUD-owned multifamily property disposition.

(a) *General.* The requirements of this section apply to the sale of any HUD-owned multifamily property when its use is intended for residential habitation. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age). The requirements of this section do not apply to 0-bedroom units.

(b) *Defective paint surfaces.* For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before offering the property for sale. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before delivery of the property to the purchaser or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required reports. Residential structures assisted under section 223(f) of the National Housing Act are to be inspected and treated as set forth in this paragraph.

(c) *Chewable surfaces.* If the residential structure was constructed or substantially rehabilitated prior to 1978, HUD shall cause a random sampling of dwelling units to be tested for lead-based paint on chewable surfaces as part of the sales contracting procedure. Random testing shall be performed as described in § 200.820(c)(1). Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by the State or local health or housing agency, a qualified HUD inspector, or an organization recognized by HUD. The testing entity shall certify to the results of the test. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). Treatment shall be completed before delivery of the property to the purchaser, or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required repairs.

(1) *EBL Child.* In the case of a residential structure constructed prior to 1978, if HUD is presented with test results that indicate a child seven years of age or younger living in a unit has an elevated blood level or EBL, HUD must test or cause to be tested the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test and abate all the unit surfaces.

(2) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section, in the

case of a residential structure constructed prior to 1978, HUD, at its option, may forego testing, and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

(d) *Tenant protection.* HUD or the purchaser, as appropriate, shall take appropriate action as prescribed by the Commissioner to protect tenants from hazards associated with abatement procedures.

[52 FR 1891, Jan. 15, 1987; 52 FR 9828, Mar. 27, 1987, as amended at 53 FR 20800, June 6, 1988]

§ 200.830 Compliance with other Federal, State and local laws.

(a) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in a manner that will promote efficiency while ensuring a comparable level of protection.

(b) *Participant responsibility.* Nothing in this subpart is intended to relieve any participant in the programs covered by this subpart of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(c) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, *e.g.*, 40 CFR Parts 260–271.)

[52 FR 1891, Jan. 15, 1987]

Subparts P–Q—[Reserved]

Subpart R—Claims Collection Standards

§ 200.900 General collection standards.

The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property are prescribed in the regulations issued jointly by the General Acounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Parts 101–105). These standards are applicable to the administrative claims collection activities of the Commissioner. (Also see 24 CFR Part 17, Subpart B, for Departmental collection regulations.)

[48 FR 1193, Jan. 11, 1983]

§ 200.905 Collection of Title I accounts.

Amounts received in connection with Title I claims which have been or will be assigned to the United States of America pursuant to § 201.11 of this chapter shall be applied according to the so-called "U.S. Rule" as prescribed in § 102.10 of the joint regulations of the General Accounting Office and the Department of Justice (4 CFR 102.10). However, amounts already paid on loans assigned prior to March 10, 1983 will not be recomputed according to the "U.S. Rule". The implementation of this section will be accomplished in phases, so that conversion to the "U.S. Rule" will occur as the automated loan accounting system becomes operational in each HUD Region. Prior to such implementation, amounts received under payment plans providing for regular installment payments will be applied in accordance with the formula stated in 24 CFR 200.905 as in effect prior to March 10, 1983. All debtors will receive timely advance notice regarding the method of applying their payments on assigned Title I loans.

[48 FR 1193, Jan. 11, 1983]

Subpart S—Minimum Property Standards

§ 200.925 Applicability of minimum property standards.

All housing constructed under HUD mortgage insurance and low-rent public housing programs shall meet or exceed HUD Minimum Property Standards, except that this requirement shall be applicable to manufac-

tured homes eligible for insurance pursuant to § 203.43f of this part only to the extent provided therein.

[48 FR 7735, Feb. 24, 1983]

§ 200.925a Multifamily and care-type minimum property standards.

(a) *Construction standards.* Multifamily or care-type properties shall comply with the minimum property standards contained in the handbook identified in § 200.929(b)(2). In addition, each such property shall, for the Department's purposes, comply with:

(1) The applicable State of local building code, if the property is located within a jurisdiction which has a building code accepted by the Secretary under § 200.925a(d); or

(2)(i) The applicable State or local building code, and

(ii) Those portions of the codes identified in § 200.295c which are designated by the HUD Field Office serving the jurisdiction in which the property is to be located, if the property is located in a jurisdiction which has a building code partially accepted by the Secretary; or

(3) The appropriate codes, as identified in § 200.925c(c), if the property is not located within a jurisdiction which has a building code accepted by the Secretary.

(b) *Conflicting standards.* The minimum property standards contained in the handbook identified in § 200.929(b)(2) do not preempt state or local standards, nor do they alter or affect a builder's obligation to comply with any state or local requirements. However, a property shall be eligible for benefits only if it complies with all applicable minimum property standards, including referenced standards.

(c) *Standard for evaluating local building codes.* The Secretary shall compare the portions of a local or State building code applicable to residential or institutional occupancy, as appropriate, submitted under § 200.925a(d) to the list of construction related areas contained in § 200.925b.

(1) A State or local code will be accepted if it regulates each area on the list.

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. Provided, however, that no code may be partially accepted if it fails to regulate subareas in more than one of the major areas: fire safety, light and ventilation, structural loads, foundation systems, materials standards, construction components, glass, mechanical, plumbing, electrical and elevators. *See* § 200.925b.

(3) For purposes of this paragraph, a state or local code regulates an area if it establishes a standard concerning that area.

(d) *Review process and acceptance—*(1) *Jurisdictions without previously accepted building codes.* The following submission requirements apply to developers and other interested parties in jurisdictions without building codes, jurisdictions with building codes which have never been submitted for acceptance, and jurisdictions with building codes which have been submitted for acceptance and neither accepted nor partially accepted by the Secretary.

(i) Developers or other interested parties must comply with one of the following by the time of application for insurance or other benefits:

(A) The developer or other interested party may choose to comply with the appropriate codes as identified in § 200.925c. If the developer or other interested party so chooses, then the multifamily or care-type property shall be constructed in accordance with one of the model codes designated in paragraph (c)(1), (2) or (3) of § 200.925c and with any other code or codes identified in the same paragraph. In such instances, the developer or other interested party shall notify the Department of the code or group of codes with which it intends to comply by the time of application for insurance or other benefits; or

(B) The developer or other interested party may choose to comply with the State or local building code, if such code is acceptable to the Secretary. To obtain the Secretary's acceptance, the developer or other interested party shall submit the material specified in paragraph (d)(1)(ii) of this section to the HUD Field Office serving the jurisdiction in which the property is to be constructed. Such material may be submitted at any time; provid-

ed, however, that it must be submitted no later than the time of application for mortgage insurance or other benefits.

(ii) If, under paragraph (d)(1)(i)(B) of this section, the developer or other interested party chooses to comply with the State or local building code as prescribed in paragraph (a)(1) of this section, it shall submit the following material to the HUD field Office serving the jurisdiction in which the property is to be constructed:

(A) A copy of the jurisdiction's building code, including all applicable service codes, appendices and referenced standards; and

(B) A copy of the statute, ordinance, regulation, or order establishing the code, if such statute, ordinance, regulation or order is not contained in the building code itself.

However, the developer or other interested party need not submit any document already on file in the Field Office.

(2) *Jurisdictions with previously accepted or partially accepted building codes.* The following submission requirements apply to developers and other interested parties in any jurisdiction with a building code which has been accepted or partially accepted by the Secretary:

(i) At the time of application for mortgage insurance or other benefits, the developer or other interested party shall submit to the HUD Field Office serving the jurisdiction in which the property is to be constructed.

(A) A certificate stating that, since its acceptance by the Secretary, the jurisdiction's building code has not been changed; or

(B) (*1*) A copy of all changes to the jurisdiction's building code, including all applicable service codes and appendices, which have been made since the date of the code's acceptance by the Secretary. However, the developer or other interested party need not submit any part already in the possession of the Field Office; and

(*2*) A copy of the statute, ordinance regulation, or order making such changes in the code.

(3) *Notification of decision.* The Secretary shall review the material submitted under paragraphs (d) (1) and (2)(i). Following that review, t Secretary shall issue a written not (except in the case of a previously cepted code which hasn't be changed) to the submitting party st ing whether the State or local buildi code has been accepted, partially cepted, or whether the Secretar previous acceptance or partial acce ance has been continued; the basis the Secretary's decision; and a noti cation of the submitting party's rig to present its views concerning t denial of acceptance if the code is n ther accepted nor partially accepte The Secretary may, in his discretio permit either an oral or written pre entation of views.

(i) If a developer or other interest party is notified that a State or loc building code has not been accepte then the multifamily or care-typ properties eligible for HUD benefits that jurisdiction shall be constructe in accordance with the appropriat codes indicated in § 200.925c(c). I such instances, the developer or othe interested party shall notify the HU Field Office of the code or codes wit which it chooses to comply, in accord ance with § 200.925a(d)(1)(i)(A).

(ii) If a developer or other interest party is notified that a State or loc building code has been partially ac cepted, then the multifamily or care type properties eligible for HUD bene fits in that jurisdiction shall be con structed in accordance with the appli cable State or local building code, plu those additional requirements identi fied in the written notice issued by the Secretary under § 200.925a(d)(3). The written notice shall identify, in accord ance with Appendix J of the Hand book identified in § 200.929(b)(2), those portions of the codes listed a § 200.925c(a) with which the property must comply.

(iii) Each Regional Office will main tain a current list of jurisdictions with accepted building codes and a current list of jurisdictions with partially §§ 30.400–1 and 30.400–2 (Part 400) ac cepted building codes. The lists will state the most recent date of each code's acceptance or partial accept ance and will be available to any inter ested party upon request. In addition,

the list of jurisdictions whose codes have been partially accepted shall identify those portions of the codes listed at § 200.925c(a) with which the property must comply.

(Approved by the Office of Management and Budget under control number 2502-0321)

[49 FR 18695, May 1, 1984, as amended at 51 FR 28699, Aug. 11, 1986]

§ 200.925b Residential and institutional building code comparison items.

HUD will review each local code submitted under this Chapter to determine whether it regulates all of the following areas and subareas:

(a) *Fire safety.*
(1) Construction types permitted;
(2) Allowable height and area;
(3) Fire separations;
(4) Fire resistance requirements;
(5) Means of egress (number and distance);
(6) Individual unit smoke detectors;
(7) Building alarm systems;
(8) Highrise criteria;
(b) *Light and ventilation.*
(1) Habitable rooms;
(2) Bath and toilet rooms.
(c) *Structural loads.*
(1) Design live loads;
(2) Design dead loads;
(3) Snow loads;
(4) Wind loads.
(5) Earthquake loads (in localities identified by ANSI Standard A 58.1-1982 as being in seismic zones 1, 2, 3 or 4, and Guam.)
(6) Special loads, i.e., soil pressure, railings, interior walls etc.
(d) *Foundation systems.*
(1) Soil tests;
(2) Foundation depths;
(3) Footings;
(4) Foundation materials criteria;
(5) Piles, i.e., materials, allowable stresses, design;
(6) Excavation;
(e) *Materials standards.*
(f) *Construction components.*
(1) Steel;
(2) Masonry;
(3) Concrete;
(4) Gypsum;
(5) Lumber;
(6) Roof construction and covering;
(7) Chimneys and fireplaces.
(g) *Glass.*
(1) Thickness/area requirements;
(2) Safety glazing.
(h) *Mechanical.*
(1) Heating, cooling and ventilation systems;
(2) Boilers and pressure vessels;
(3) Gas, liquid and solid fuel piping and equipment;
(4) Chimneys and vents;
(5) Ventilation (air changes).
(i) *Plumbing.*
(1) Materials standards;
(2) Sizing and installing drainage systems;
(3) Vents and venting;
(4) Traps;
(5) Cleanouts;
(6) Plumbing fixtures;
(7) Water supply and distribution;
(8) Storm drain systems.
(j) *Electrical.*
(1) Wiring design and protection;
(2) Wiring methods and materials;
(3) Equipment for general use;
(4) Special equipment;
(5) Special conditions;
(6) Communication systems.
(k) *Elevators.*
(1) Reference ANSI A17.1;
(2) Acceptance tests and periodic tests.

[49 FR 18696, May 1, 1984, as amended at 51 FR 28699, Aug. 11, 1986]

§ 200.925c Model codes.

(a) *Incorporation by reference.* The following publications are incorporated by reference under 5 U.S.C. 552(a) and 1 CFR Part 51. The incorporation by reference of these publications has been approved by the Director of the Federal Register. The locations where copies of these publications are available are set forth below.

(1) *Model Building Codes*—(i) *The BOCA Basic/National Building Code/1984,* excluding Article I, Administration and Enforcement, but including Appendices A, C, D and E of the Code. Available from Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.

(ii) *Standard Building Code,* 1982 Edition, excluding Chapter 1—Administration, but including appendices A, C, E and M of the Code, and including *Amendments to the Standard Building*

Code, 1983 Revisions to the 1982 Edition of the Code. Available from Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206.

(iii) *Uniform Building Code*, 1982 Edition, excluding Part I—Administrative, but including the appendix of the Code. *Uniform Plumbing Code, Uniform Mechanical Code*, 1982 Edition. Available from International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(2) *National Electrical Code*/1984 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(b) *Model Code Compliance Requirements.* (1) When a multifamily or care-type property is to comply with one of the model building codes set forth in paragraph (a)(1) of this section, the following requirements of those model codes shall not apply to those properties:

(i) Those provisions of the model codes that do not pertain to residential or institutional buildings;

(ii) Those provisions of the model codes that establish energy requirements for multifamily or care-type structures; and

(iii) Those provisions of the model codes that require or allow the issuance of permits of any sort.

(2) Where the model codes set forth in paragraph (a)(1) of this section designate a building, fire, mechanical, plumbing or other official, the Secretary's designee in the HUD Field Office serving the jurisdiction in which the property is to be constructed shall act as such official.

(c) *Designation of Model Codes.* When a multifamily or care-type property is to comply with a model code, it shall comply with one of the model codes designated in paragraph (c) (1), (2) or (3) of this section and with any other code or codes identified in the same paragraph. In addition, such property shall comply with all of the standards which are incorporated into such code or codes by reference. The developer or other interested party shall notify the Department of the code or group of codes with which it intends to comply by the time of application for insurance or other benefits.

(1) *The BOCA Basic/National Building Code/1984.*

(2) *Standard Building Code/1982* and the *National Electrical Code/1984.*

(3) *Uniform Building, Plumbing and Mechanical Codes/1982* and the *National Electrical Code/1984.*

[49 FR 18696, May 1, 1984, as amended at 51 FR 28690, Aug. 11, 1986]

§ 200.926 Minimum property standards for one and two family dwellings.

(a) *Construction standards*—(1) *Applicable structures.* The standards identified or contained in this section and §§ 200.926a—200.926e shall apply to single family detached homes, duplexes, triplexes and to living units in a structure where the units are located side by side in townhouse fashion.

(2) *Applicability of standards to new construction.* The standards referenced in paragraph (a)(1) of this section are applicable to:

(i) Structures approved for insurance or other benefits prior to the start of construction;

(ii) Structures which are approved for insurance or other benefits based upon participation in an insured warranty program;

(iii) Structures which are insured as new construction based upon a Certificate of Reasonable Value issued by the Department of Veterans Affairs; and

(iv) Proposed construction insured under the Direct Endorsement program.

(b) *Conflicting standards.* The requirements contained in § 200.926d do not preempt local or State standards, nor do they alter or affect a builder's obligation to comply with any local or State requirements. However, a property shall be eligible for benefits only if it complies with the requirements of this subpart, including any referenced standards. When any of the requirements identified in § 200.926c are in conflict with a partially accepted local or state code, the conflict will be resolved by the HUD Field Office servic-

ing the jurisdiction in which the property is to be located.

(c) *Standard for evaluating local or state building codes.* The Secretary shall compare a local building code submitted under paragraph (d) of this section or a State code to the list of construction related areas contained in § 200.926a.

(1) A local or State code will be accepted if it regulates each area and subarea on the list.

(2) A local or State building code will be partially accepted if it regulates most of the areas on the list. Provided, however, that no code may be partially accepted if it fails to regulate one or more subareas in more than one of the major areas. The major areas are: fire safety, light and ventilation, structural loads, foundation systems, materials standards, construction components, glass, mechanical, plumbing and electrical. *See* § 200.926a.

(3) For purposes of this paragraph, a local or State code regulates an area or subarea if it establishes a standard concerning that area or subarea.

(d) *Code selection.* Any materials required to be submitted under this section must be submitted by the time the lender or other interested party applies for mortgage insurance or other benefits.

(1) *Jurisdictions without previously accepted building codes.* The following submission requirements apply to lenders and other interested parties in jurisdictions without building codes, jurisdictions with building codes which have never been submitted for acceptance, and jurisdictions with building codes which previously have been submitted for acceptance and have not been accepted or partially accepted by the Secretary.

(i) In jurisdictions without local building codes:

(A) If the State building code is acceptable, the lender or other interested party must comply with the State building code and the requirements of § 200.926d;

(B) If the State building code is partially acceptable, the lender or other interested party must comply with:

(*1*) The acceptable portions of the partially acceptable code; and

(*2*) Those portions of the CABO One and Two Family Dwelling Code or the Electrical Code for One-and-Two-Family Dwellings designated by the HUD Field Office in accordance with § 200.926c; and

(*3*) The requirements of § 200.926d.

(C) If there is no State building code or if the State building code is unacceptable, the lender or other interested party must comply with:

(*1*) The CABO One and Two Family Code and the Electrical Code for One and Two Family Dwellings, as identified in § 200.926b(a); and

(*2*) The requirements of § 200.926d.

(ii) In jurisdictions with local building codes which have never been submitted for review, lenders or other interested parties must:

(A) Comply with the requirements of paragraph (d)(1)(i) (A), (B) or (C) of this section, as appropriate; or

(B) Request the Secretary's acceptance of the local building code in accordance with paragraph (d)(1)(iv) of this section.

(*1*) If the Secretary determines that the local building code is unacceptable, then the lender or other interested party must comply with the requirements of paragraph (d)(1)(i) (A), (B) or (C) of this section as appropriate.

(*2*) If the Secretary determines that the local code is partially acceptable, then the lender or other interested party must comply with:

(*i*) The acceptable portions of the partially acceptable local code; and

(*ii*) Those portions of the CABO One and Two Family Dwelling Code or the Electrical Code for One and Two Family Dwellings designated by the HUD Field Office in accordance with § 200.926c; and

(*iii*) The requirements of § 200.926d.

(*3*) If the Secretary determines that the local code is acceptable, then the lender or other interested party must comply with the local building code and the requirements of § 200.926d.

(iii) In jurisdictions with local building codes which previously have been submitted for review and which have been found unacceptable by the Secretary:

(A) If the local code has not been changed since the date the code or

changes thereto were submitted to the Secretary, the lender or other interested party must comply with the requirements of paragraph (d)(1)(i) (A), (B) or (C) of this section, as appropriate; or

(B) If the local code has been changed since the date when the code or changes thereto were submitted to the Secretary, the lender or other interested party must submit a copy of all changes to the local building code, including all applicable service codes and appendices and a copy of the statute, ordinance, regulation or order making such changes in the code, which have been made since the date when the code or other changes thereto were last submitted to the Secretary. However, the lender or other interested party need not submit any part already in the possession of the HUD Field Office. Based upon the Secretary's determination concerning the acceptability of the local code as changed, the lender or other interested party must comply with the requirements of paragraph (d)(1)(ii)(B) (*1*), (*2*) or (*3*) of this section, as appropriate.

(iv) In order to obtain the Department's approval of a local code, the lender or other interested party must submit the following material to the HUD Field Office serving the jurisdiction in which the property is to be constructed:

(A) A copy of the jurisdiction's local building code, including all applicable service codes and appendices; and

(B) A copy of the statute, ordinance, regulation, or order establishing the code, if such statute, ordinance, regulation or order is not contained in the building code itself.

However, the lender or other interested party need not submit any document already on file in the HUD Field Office.

(2) *Jurisdictions with previously accepted or partially accepted building codes.* The following submission requirements apply to lenders or other interested parties in any jurisdiction with a building code which has been accepted or partially accepted by the Secretary:

(i) The lender or other interested party shall submit to the HUD Field Office serving the jurisdiction in which the property is to be constructed:

(A) A certificate stating that, since the date when the code or any changes thereto were last submitted to the Secretary, the jurisdiction's local building code has not been changed; or

(B) (*1*) A copy of all changes to the jurisdiction's building code, including all applicable service codes and appendices, which have been made since the date when the code or other changes thereto were last submitted to the Secretary. However, the lender or other interested party need not submit any part already in the possession of the HUD Field Office; and

(*2*) A copy of the statute, ordinance, regulation, or order making such changes in the code.

(ii) If, based upon changes to the local building code, the Secretary determines that it is unacceptable, the lender or other interested party must comply with the requirements of paragraph (d)(1) (i)(A), (B) or (C) of this section, as appropriate.

(iii) If the local building code was previously found by the Secretary to be partially acceptable and there have been no changes to it or if the local building code was previously found by the Secretary to be partially acceptable and if, based upon changes to it, the Secretary determines that it is still partially acceptable or if the local building code was previously found by the Secretary to be acceptable and if, based upon changes to it, the Secretary determines that it is partially acceptable, then the lender or other interested party must comply with paragraphs (d)(1)(ii)(B)(*2*) (*i*), (*ii*) and (*iii*) of this section.

(iv) If the local building code was previously found by the Secretary to be partially acceptable and if, based upon changes to it, the Secretary determines that it is acceptable, or if the local building code was previously found by the Secretary to be acceptable and there have been no changes to the code, or if the local building code was previously found by the Secretary to be acceptable and if, based upon changes to it, the Secretary determines that it is still acceptable, then the lender or other interested party

must comply with the local building code and the requirements of § 200.926d.

(3) *Notification of decision.* The Secretary shall review the material submitted under § 200.926(d). Following that review, the Secretary shall issue a written notice (except where there is a previously accepted or partially accepted code which has not been changed) to the submitting party stating whether the local building code is acceptable, partially acceptable, or not acceptable. Where the local building code is not acceptable, the notice shall also state whether the State code is acceptable, partially acceptable or not acceptable. The notice shall also contain the basis for the Secretary's decision and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his discretion, permit either an oral or written presentation of views.

(4) *Department's responsibilities.* (i) Each Regional and Field Office will maintain a current list of jurisdictions with accepted local or State building codes, a current list of jurisdictions with partially accepted local or State building codes and a current list of jurisdictions with local or State building codes which have not been accepted. For local codes, the lists will state the most recent date when the code or changes thereto were submitted to the Secretary. The lists, which shall be prepared by the Field Offices and submitted to the Regional Offices, will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify in accordance with § 200.926c those portions of the codes listed at § 200.926b(a) with which the property must comply.

(ii) The Department is responsible for obtaining copies of the State codes and any changes thereto.

[50 FR 39592, Sept. 27, 1985, as amended at 54 FR 39525, Sept. 27, 1989]

§ 200.926a Residential building code comparison items.

HUD will review each local and State code submitted under this subpart to determine whether it regulates all of the following areas and subareas:

(a) *Fire Safety.*
(1) Allowable height;
(2) Fire separations;
(3) Fire resistance requirements;
(4) Egress doors and windows;
(5) Unit smoke detectors;
(6) Flame spread.
(b) *Light and ventilation.*
(1) Habitable rooms;
(2) Bath and toilet rooms.
(c) *Structural loads.*
(1) Design live loads;
(2) Design dead loads;
(3) Snow loads (for jurisdictions with snow loading conditions identified in Section 7 of ANSI A58.1–82);
(4) Wind loads;
(5) Earthquake loads (for jurisdictions in seismic zones 3 or 4 as identified in Section 9 of ANSI A58.1–82).
(d) *Foundation systems.*
(1) Foundation depths;
(2) Footings;
(3) Foundation materials criteria.
(e) *Materials standards.*
(1) Materials standards.
(f) *Construction components.*
(1) Steel;
(2) Masonry;
(3) Concrete;
(4) Lumber;
(5) Roof construction and covering;
(6) Chimneys and fireplaces.
(g) *Glass.*
(1) Thickness/area requirements;
(2) Safety glazing.
(h) *Mechanical.*
(1) Heating, cooling and ventilation systems;
(2) Gas, liquid and solid fuel piping and equipment;
(3) Chimneys and vents;
(4) Ventilation (air changes).
(i) *Plumbing.*
(1) Materials standards;
(2) Sizing and installing drainage systems;
(3) Vents and venting;
(4) Traps;
(5) Cleanouts;
(6) Plumbing fixtures;
(7) Water supply and distribution;
(8) Sewage disposal systems.
(j) *Electrical.*
(1) Branch circuits;
(2) Services;
(3) Grounding;

(4) Wiring methods;
(5) Cable;
(6) Conduit;
(7) Outlets, switches and junction boxes;
(8) Panelboards.

[50 FR 39594, Sept. 27, 1985]

§ 200.926b Model codes.

(a) *Incorporation by reference.* The following model code publications are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The incorporation by reference of these publications has been approved by the Director of the Federal Register. The locations where copies of these publications are available are set forth below.

(1) *CABO One and Two Family Dwelling Code,* 1983 edition, with the 1984 and 1985 Amendments, excluding Chapter 1—Administrative; Part VI—Electrical; and Part VII—Energy Conservation, but including Appendices A and B of the Code. Available from Council of American Building Officials, 5203 Leesburg Pike, Falls Church, VA 22041.

(2) *Electrical Code for One and Two Family Dwellings,* NFPA 70A, 1984 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(b) *Model code compliance requirements.* (1) When a one or two family dwelling is to comply with the model codes set forth in § 200.926b(a), the following requirements of those model codes shall not apply to those properties:

(i) Those provisions of the model codes that establish energy requirements for one and two family dwellings; and

(ii) Those provisions of the model codes that require or allow the issuance of permits of any sort.

(2) Where the model codes set forth in paragraph (a) of this section designate a building, fire, mechanical, plumbing or other official, the Secretary's designee in the HUD Field Office serving the jurisdiction in which the dwelling is to be constructed shall act as such official.

(c) *Designation of model codes.* When a one or two family dwelling is to comply with portions of a model code or the entire model code, it shall comply with the model codes in paragraph (c)(1) and/or (c)(2) of this section as designated by the HUD Field Office serving the jurisdiction in which the property is located. In addition, such property shall comply with all of the standards which are referenced in such code or codes.

(1) *CABO One and Two Family Dwelling Code/1983 with 1984 and 1985 amendments.*

(2) *Electrical Code for One and Two Family Dwellings, NFPA 70A/1984.*

[50 FR 39594, Sept. 27, 1985]

§ 200.926c Model code provisions for use in partially accepted code jurisdictions.

If a lender or other interested party is notified that a State or local building code has been partially accepted, then the properties eligible for HUD benefits in that jurisdiction shall be constructed in accordance with the applicable State or local building code, plus those additional requirements identified below. Depending upon the major area identified in § 200.926a which is not adequately regulated by the State or local code, the HUD Field Office will designate, in accordance with the schedule below, those portions of one of the model codes with which the property must comply.

SCHEDULE FOR MODEL CODE SUPPLEMENTS TO LOCAL OR STATE CODES

Deficient major from § 200.926a as determined by field office review	Portions of the CABO 1- and 2-family dwelling code/1983 with 1984 and 1985 amendments with which property must comply
(a) Fire safety	Chapters 2, 9; Section R-402.
(b) Light and ventilation	Chapter 2; Section R-309.
(c) Structural loads	Chapter 2.
(d) Foundation systems	Chapter 3.
(e) Materials standards	Chapter 26.
(f) Construction components	Part III.
(g) Glass	Chapter 2.
(h) Mechanical	Part IV.
(i) Plumbing	Part V.
(j) Electrical	Electrical code for 1- and 2-family dwellings (NFPA 70A–1984).

[50 FR 39594, Sept. 27, 1985]

§ 200.926d Construction requirements.

(a) *Application*—(1) *General.* These standards cover the actual site, the immediate site environment for the dwellings, including streets, storm water disposal, and other services and facilities for the site.

(2) *Requirements for accessibility to physically handicapped people.* The HUD Field Office will advise project sponsors as to the extent accessibility will be required for new construction of one- and two-family dwellings on a project-by-project basis.

(i) *Technical standards. See* HUD Handbook, 4910.1, Sections 100–1.3b and 100–1.3c.

(3) *Variations to standards*—(i) *New materials and technologies. See* paragraph (d) of this section. Alternatives, nonconventional or innovative methods and materials shall be equivalent to these standards in the areas of structural soundness, durability, economy of maintenance or operation and usability.

(ii) *Variation procedures.* Variations from the requirements of any standard with which the Department requires compliance shall be made in the following ways:

(A) For a particular design or construction method to be used on a single case or project, the decision is the responsibility of the Field Office. Headquarters concurrence is not required.

(B) Where a variation is intended to be on a repetitive basis, a recommendation for a Local Acceptable Standard, substantiating data, and background information shall be submitted by the Field Office to the Director, Office of Manufactured Housing and Regulatory Functions.

(iii) Variances which require individual analysis and decision in each instance are not considered as repetitive variances even though one particular standard is repeatedly the subject of variation. Such variances are covered by paragraph (a)(3)(ii)(A) of this section.

(b) *General acceptability criteria*—(1) *Real estate entity.* The property shall comprise a single plot except that a primary plot with a secondary plot for an appurtenant garage or for other use contributing to the marketability of the property will be acceptable provided the two plots are in such proximity as to comprise a readily marketable real estate entity.

(2) *Service and facilities*—(i) *Trespass.* Each living unit shall be one that can be used and maintained individually without trespass upon adjoining properties, except when the windowless wall of a detached dwelling is located on a side lot line. A detached dwelling may be located on a side lot line if:

(A) legal provision is made for permanent access for the maintenance of the exterior portion of the lot line wall, and

(B) the minimum distances from the dwelling to the dwellings on the abutting properties are not less than the sum of the side yard distances computed as appropriate for the type of opposing walls. (minimum distance 10 ft).

(ii) *Utilities.* Utility services shall be independent for each living unit, except that common services such as water, sewer, gas and electricity may be provided for living units under a single mortgage or ownership. Separate utility service shut-off for each unit shall be provided. For living units under separate ownership, common utility services may be provided from the main to the building line when protected by an easement or convenant and maintenance agreement acceptable to HUD, but shall not pass over, under or through any other living unit. Individual utilities serving a living unit may not pass over, under or through another living unit under the same mortgage unless provision is made for repair and maintenance of utilities without trespass or when protected by an easement or covenant providing permanent access for maintenance and repair of the utilities. Building drain cleanouts shall be accessible from the exterior where a single drain line within the building serves more than one unit.

(3) *Site conditions.* (i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of the occupants or the structural soundness of the improvements, or which may impair the customary use and en-

joyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or others located on or off site. The site must meet the standards set forth at 24 CFR Part 51.

(ii) When special conditions exist or arise during construction which were unforeseen and which necessitate precautionary or hazard mitigation measures, the HUD Field Office shall require corrective work to mitigate potential adverse effects from the special conditions as necessary. Special conditions include rock formations, unstable soils or slopes, high ground water levels, springs, or other conditions which may adversely affect a property. It shall be the builder's responsibility to ensure proper design, construction and satisfactory performance where these conditions are present.

(4) *Access.* (i) Each property shall be provided with vehicular or pedestrian access by a public or private street. Private streets shall be protected by permanent easement.

(ii) Each living unit shall have a means of access such that it is unnecessary to pass through any other living unit.

(iii) The rear yard shall be accessible without passing through any other living unit.

(iv) For a townhouse type dwelling, access to the rear yard may be by means of alley, easement, passage through the dwelling, or other means acceptable to the HUD Field Office.

(c) *Site design*—(1) *General.* (i) A site design shall be provided which includes an arrangement of all site facilities necessary to create a safe, functional, healthful, durable and energy efficient living environment.

(ii) These site design standards are applicable only in communities which have not adopted criteria for site development applicable to one and two family dwellings.

(iii) Single family detached houses situated on individual lots located on existing streets with utilities need not comply with the requirements of paragraphs (c) (2), (3) and (4)(ii) of this section.

(2) *Streets.* (i) Existing or proposed streets on the site shall connect to private or public streets and shall provide all-weather access to all buildings for essential and emergency use, including access needed for deliveries, service, maintenance and fire equipment.

(ii) Streets shall be designed for dedication for public use and maintenance or, when approved by the HUD Field Office, may be retained as private streets where protected by permanent easements.

(3) *Dedication.* Utilities shall be located to permit dedication to the local government or appropriate public body.

(4) *Drainage and flood hazard exposure.* (i) The minimum grades at buildings and at openings into basements shall be at elevations which prevent adverse effect by water or water entering basements from flood levels equivalent to a 50 year return frequency after full development. The floor elevations of all habitable space shall be above runoff and flood levels equivalent to a 100 year return frequency after full development.

(ii) Streets shall be usable during runoff equivalent to a 10 year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10 year return frequency from ponding over 6 inches deep, streets shall be made passable for commonly used emergency vehicles during runoff equivalent to a 25 year return frequency, except where an alternate access street not subject to such ponding is available.

(iii) Crawl spaces shall not pond water or be subject to prolonged dampness.

(d) *Special construction and product acceptance*—(1) *Structural features of factory produced (modular or panelized) housing or components.*

(i) For factory fabricated systems or components, HUD Handbook 4950.1, "Technical Suitability of Products Program Technical and Processing Procedures" shall apply.

(ii) The requirements of this Part shall apply to structural features, consisting of factory fabricated systems or components assembled either at the

factory or at the construction site, if the total construction is covered by these standards and can be inspected on-site for determination of compliance.

(2) *Non-structural or non-standard features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are not covered by these requirements. *See* HUD Handbook 4950.1 for procedures to be followed in order to obtain acceptance of non-structural components or materials. *See* HUD Handbook 4910.1, Appendix F for a list of Use of Materials Bulletins. Products and methods shall conform to the appropriate Use of Materials Bulletin.

(3) *Standard features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are covered by national society or industry standards. For a list of standards to which compliance is required, *see* HUD Handbook 4910.1, Appendix C.

(e) *Thermal requirements*—(1) *Building insulation*—(i) *General.* Buildings shall be insulated so as to ensure conservation of energy, economy of operation and comfort to the occupants.

(ii) *Overall coefficient of heat transmission.* (A) All buildings which are heated or cooled mechanically shall be constructed to comply with the U values shown in the table at paragraph (e)(1)(iii) of this section. The U values shown do not include adjustments for framing in walls, ceilings or floors, nor for the sash frame in windows or glass doors.

(B) Where the stated U value of any one component of roof deck, ceiling, wall or floor cannot be practically obtained, such U value may be increased to the minimum figure attainable and the U value for other components decreased until the overall heat gain or heat loss does not exceed the total attained by conformance to the stated U values. (See Note 2 of the table at paragraph (e)(1)(iii)) of this section.

(iii) *Component coefficient values.* For ceilings, walls, floors and openings, U values shall not exceed those shown in the following table:

MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTIONS FOR ELECTRIC RESISTANCE HEAT (E.R.) AND HEAT PUMP OR FOSSIL FUEL HEAT (F.F.)[1]

Heating degree days (65 °F base)	Ceilings [2,3]		Walls [3]		Floors [4]		Windows [5]		Sliding glass doors [5]		Storm doors [6]	
	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.
0 to 1000	.05	.05	.08	.08	.....	.....	1.13	1.13	1.13	1.13	No....	No.
1001 to 2500	.04	.05	.07	.08	.....	.....	.69	1.13	.69	1.13	No [7]..	No.
2501 to 3500	.03	.04	.05	.08	.07	.....	.69	1.13	.69	1.13	No [7]..	No.
3501 to 4500	.03	.03	.05	.07	.05	.05	.69	.69	.69	.69	No [7]..	No.
4501 to 6000	.03	.03	.05	.07	.05	.07	.47	.69	.69	.69	Yes ..	No. [7]
6001 to 7000	.026	.03	.05	.07	.05	.07	.47	.69	.69	.69	Yes ..	No. [7]
7001 +	.026	.026	.05	.05	.05	.05	.47	.47	.69	.69	Yes ..	Yes.

NOTES

[1] For areas of 5,000 heating degree days (HDD) or less, houses using heat pumps may be insulated to levels required for fossil fuels. In areas above 5,000 HDD, houses using air-to-air heat pumps shall be insulated to levels required for electric resistance (E.R.) heating, except where the following are used:

a. Water source heat pumps.
b. Fossil fuel supplement heat.
c. Units with multiple capacity.
(1) Dual compressors
(2) Modulating compressor speed
(3) Dual speed compressor
d. Uni-directional heat pumps (such as annual cycle energy systems (ACES)).
e. Units with balanced heating and cooling load.

[7] The following combinations of wall and ceiling values are considered to provide annual heating and cooling consumption comparable to that predicted for values in the above Table and may be substituted accordingly. Other components shall conform to the values shown below for the specific heating degree day (HDD):

HDD (65°-F	ER		FF	
	CLG	Wall	CLG	Wal
0 to 1000	.04	.14	.04	.1
	.03	.15	.03	.1
	.026	.16	.026	.1
1001 to 1500	+	+	.04	.1
	.03	.13	.03	.1
	.026	.14	.026	.1
1501 to 2500	+	+	.04	.1
	.03	.11	.03	.1
	.026	.12	.026	.1
2501 to 3000	+	+	.03	.1
	.026	.07	.026	.1

(+See Table at § 200.926d(e)(1)(iii).

[2] Includes roof/ceiling assemblies, in which the finished ceiling is the underside of the roof deck.

[4] For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces. A basement, crawl space or garage shall be considered unheated unless it is provided with a positive heat supply sufficient to maintain a minimum temperature of 50°F. A positive heat supply is defined as heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space. When the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

[5] Maximum glass area shall not exceed 15 percent of the gross area of all exterior walls enclosing heated spaces, except when it can be demonstrated that the winter daily solar heat gain exceeds the 24 hour heat loss and the glass area is properly screened from summer solar heat gain. In areas where cooling is the predominant load and the heating load is insignificant (as an example, 2000 or more cooling hours and 2000 or less heating degree days), the maximum glazing area stated above may be waived when glass area is properly screened from solar heat gain. Any additional glass area shall have a significant portion of operable sash in order to provide natural ventilation.

[6] A 1-¾ inch metal faced door system with an insulated core and durable weatherstripping providing a U value equal or better than 0.32, and an infiltration rate not greater than .50 cfm per foot of crack length, tested accordingly to ASTM E 283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All exterior doors shall be weatherstripped.

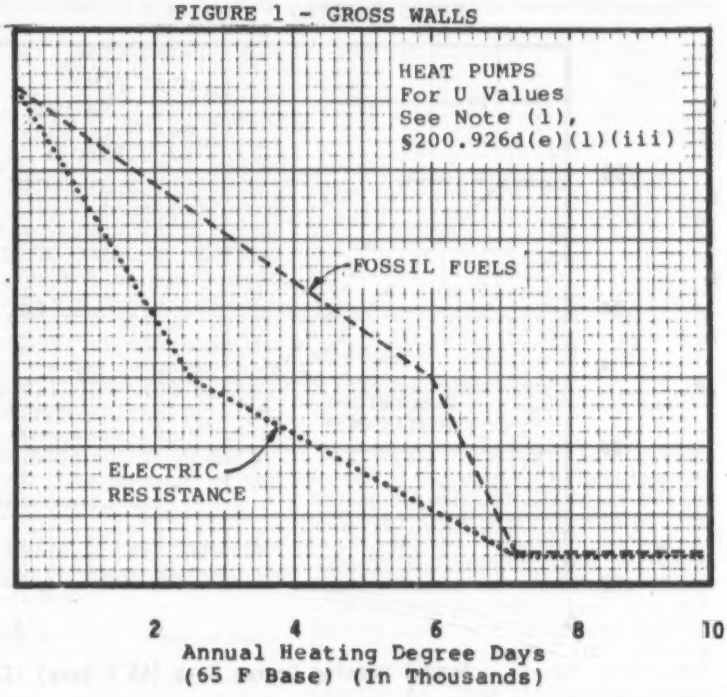
[7] In areas with 1501 or more heating degree days, a storm door is required when the primary door is a hollow core door or is over 25% glass.

(iv) *Alternate performance criteria.* (A) As an alternative to conformance with the table at paragraph (e)(1)(iii) of this section, dwellings which conform to the performance criteria of this section shall be considered acceptable.

(B) U_o (gross wall)—Total exterior wall area (opaque wall and window and door) shall have a combined thermal transmittance value (U_o value) not to exceed the values shown in Figure 1. Equation 1 shall be used to determine acceptable combinations to meet the requirements of Figure 1.

(C) U_o (gross ceiling)—Total ceiling area (opaque ceiling and skylights) shall have a combined thermal transmittance value (U_o value) not to exceed the values shown in Figure 2. Equation 2 shall be used to determine acceptable combinations to meet the requirements of Figure 2.

FIGURE 1 - GROSS WALLS



Equation 1 Formula for Determining Combinations (See Figure 1)

Where

$U_o = (U_{wall} A_{wall} + U_{window} A_{window} + U_{door} A_{door})/A$

U_o = the average thermal transmittance of the gross wall area, Btu/(h x sq. ft. x F)

A_o = the gross area of all exterior walls enclosing heated spaces, sq. ft.

U_{wall} = the thermal transmittance of all elements of the opaque wall area, Btu/(h x sq. ft. x F)

A_{wall} = opaque wall area enclosing heated spaces, sq. ft.

U_{window} = the thermal transmittance of the window area, Btu/(h x sq. ft. x F)

A_{window} = window area (including sash), sq. ft.

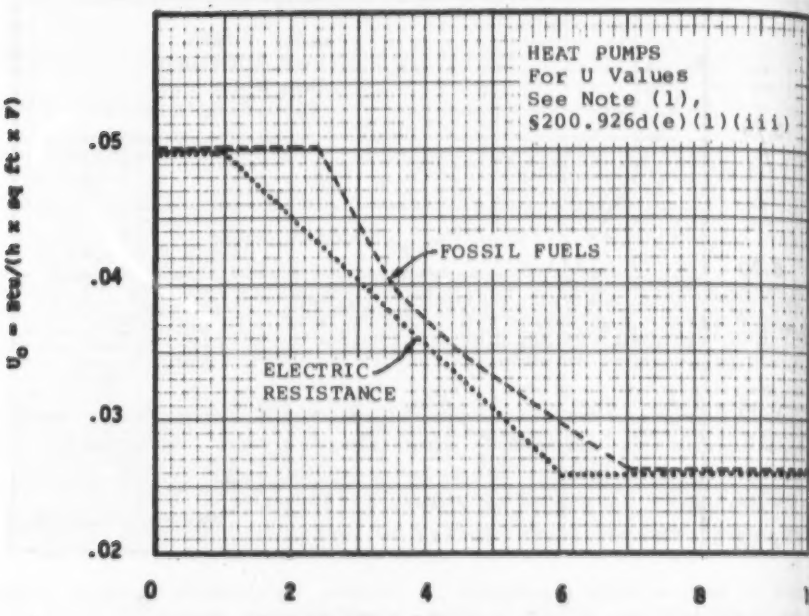
U_{door} = the thermal transmittance of the door area, Btu/(h x sq. ft. x F)

A_{door} = door area (including sash), sq. ft.

NOTE: Where more than one type of wall, window and/or door is used, the U x A term for that exposure shall be expanded into its sub-elements, as follows:

$U_{wall_1} A_{wall_1} + U_{wall_2} A_{wall_2}$, etc.

GROSS CEILING - FIGURE 2



Equation 2 Formula for Determining Roof/Ceiling Combinations

where:

$U_o = ({}^{U}roof\,{}^{A}roof + {}^{U}skylight\,{}^{A}skylight/A$.

U_o=the average thermal transmittance of the gross roof/ceiling area, Btu/(h x sq. ft. x F)

A_o=the gross area of a roof/ceiling assembly, sq. ft.

$^{A}roof$=opaque roof/ceiling area, sq. ft.

$^{U}roof$=the thermal transmittance of all elements of the opaque roof/ceiling area, Btu/(h x sq. ft. x F).

$^{U}skylight$=the thermal transmittance of all skylight elements in the roof/ceiling assembly, Btu/h x sq. ft. x f)

$^{A}skylight$=skylight area (including frame), sq. ft.

NOTE TO EQUATION 2.—Where more than one type of roof/ceiling and/or skylight is used, the U x A term for that exposure shall be expanded into its subelements, as:

$^{U}roof_1\,{}^{A}roof_1 + {}^{U}roof_2\,{}^{A}roof_2$, etc.

(v) *Overall structure performance alternative.* Structures which can be shown by accepted engineering practice to have energy consumption equal to or less than that which would be obtained by conformance to the criteria of paragraph (e)(1)(iii) or (iv) of this section shall be considered acceptable. The contribution of passive solar energy and the related storage and reradiation capacity of masonry, water and other mass may be recognized in computing energy consumption under this alternate method. The following requirements shall govern in determining comparability:

(A) The methodology shall be cost effective to the energy consumer.

(B) The methodology shall not adversely affect the structural capacity, durability, or safety aspects of the structure.

(C) All data and calculations must show valid performance comparisons between the proposed option and a

structure comparable in size, configuration, orientation and occupant usage designed in accordance with § 200.926d(e)(1) (iii) or (iv).

(vi) *Basement or crawl space foundation walls.* Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. Foundation walls of heated areas below grade need not be insulated except where recreation or similar use rooms or habitable rooms are provided, or where more than 50 percent of the wall is exposed to outside air. The U value of foundation wall sections shall not exceed the values shown in the following table except where the alternative methods shown in § 200.926d(e)(1) (iv) or (v) are employed and foundation walls are included in the determination of the average thermal transmittance of the gross wall area.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT OR HEATED CRAWL SPACE

Heating degree days (65 °F base)	Maximum U value
4500 or less	No requirement.
4501 to 4500	0.17
4501 or more	0.10

(vii) *Crawl space plenum walls.* When a crawl space is used as a supply or return plenum, the crawl space perimeter wall shall be insulated to provide a maximum heat loss of 35 Btuh per lineal foot of perimeter wall, assuming a crawl space air temperature of 70 °F for return plenums and 110 °F for supply plenums.

(viii) *Slab-on-grade floors.* For slab-on-grade floors of heated or mechanically cooled spaces, the thermal resistance of the insulation around the perimeter of the floor shall be not less than shown in the following table. Insulation shall extend downward from the top of the slab for not less than 24 in. or downward to the bottom of the slab and horizontally beneath the slab for a minimum total distance of 24 in.

MINIMUM R VALUES OF PERIMETER INSULATION FOR SLABS-ON-GRADE

Heating degree days (65 °F base)	Minimum R values [1]	
	Heated slab	Unheated slab
500 or less	2.8	.....
1,000	3.5	.....
2,000	4.0	.....
2,500	4.4	2.5
3,000	4.8	2.8
4,000	5.5	3.5
5,000	6.3	4.2
6,000	7.0	4.8
7,000	7.8	5.5
8,000	8.5	6.2
9,000	9.2	6.8
10,000 or greater	10.0	7.5

[1] For increments between degree days shown, U values may be interpolated, or the values shown in Figure 3 of ASHRAE 90A–80 may be substituted.

(ix) *Heat loss and heat gain calculations.* (A) Calculations of heat loss and heat gain shall be made in accordance with the data and procedures contained in the American Society of Heating Refrigerating and Air-conditioning Engineers' (ASHRAE) Handbook of Fundamentals-1985, the Hydronics Institute's "Heat Loss Calculation Guide" H-21-1984 and "Cooling Load Calculation Guide" C-30-1965, and the Air Conditioning Contractors of America's "Load Calculation for Residential Winter and Summer Air Conditioning" Manual J-1981.

(B) Inside design temperature shall be 70 °F for heating and 75 °F for cooling. The outside design temperature for heating shall be that established by the ASHRAE Handbook of Fundamentals at the 97.5% winter design dry bulb temperature for the location involved. The outside design temperature for cooling shall be that established by the ASHRAE Handbook of Fundamentals at the 2.5% summer design dry bulb temperature for the location involved.

(f) *Water supply systems*—(1) *General.* (i) Each living unit shall be provided with a continuing and sufficient supply of safe water under adequate pressure and of appropriate quality for all household uses. Newly constructed residential property for which a building permit has been applied for on or after June 19, 1988 from the competent authority with ju-

risdiction in this matter shall have lead-free water piping. For purposes of these standards, water piping is "lead free" if it uses solders and flux containing not more than 0.2 percent lead and pipes and pipe fittings containing not more than 8.0 percent lead. This system shall not impair the function or durability of the plumbing system or attachments.

(ii) The chemical and bacteriological standards of the local health authority shall apply. In the absence of such standards, the maximum contaminant levels of EPA shall apply. A water analysis may be required by either the health authority or the HUD Field Office.

(iii) Whenever feasible, connection shall be made to a public water system. When a public system is not available, connection shall be made to a community system which complies with HUD Handbook 4940.2, if feasible.

(2) *Individual water systems.* (i) The system should be capable of delivering a flow of 5 gpm over at least a 4 hour period.

(ii) Water that requires continuing or repetitive treatment to be safe bacterially or chemically is not acceptable. Individual dwelling water purification units are not an acceptable alternative but may be used to improve acceptable water.

(iii) After installation, the system shall be disinfected in accordance with the recommendations or requirements of the local health authority. In the absence of a health authority, system cleaning and disinfection shall conform to the current EPA Manual of Individual Water Supply Systems.

(iv) Bacteriological or chemical examination of a water sample collected by a representative of the local or state health authority shall be made when required by that authority or the HUD Field Office.

(3) *Location of wells.* (i) A well located within the foundation walls of a dwelling is not acceptable except in arctic or subarctic regions.

(ii) Water which comes from any soil formation which may be polluted, contaminated, fissured, creviced or less than 20 ft. below the natural ground surface is not acceptable, unless a ceptable to the local health authorit

(iii) Individual water supply syste are not acceptable for individual lo in areas where chemical soil poisonin has been or is practiced if the overbu den of soil between the ground surfa and the water bearing strata is coar grained sand, gravel, or porous rock, o is creviced in a manner which wi permit the recharge water to carry th toxicants into the zone of saturation.

(iv) The following table shall be use in establishing the minimum accepta ble distances between wells an sources of pollution located on eithe the same or adjoining lots. These di tances may be increased by either th health authority having jurisdictio or the HUD Field Office.

DISTANCE FROM SOURCE OF POLLUTION

Source of pollution	Minimum horizontal distance (fee
Property Line	10
Septic Tank	50
Absorption Field	[1]100
Seepage Pit	[1]100
Absorption Bed	[1]100
Sewer Lines w/Permanent Watertight Joints	10
Other Sewer Lines	50
Chemically Poisoned Soil	[2]25
Dry Well	50
Other	(3)

[1] This clearance may be increased or decreased depend ing upon soil and rock penetrated by the well and aquife conditions. The clearance may be increased in creviced limestone and permeable strata of gravel and sand. Th clearance may be reduced to 50 ft. only where the groun surface is effectively separated from the water bearing fo mation by an extensive, continuous and impervious strata o clay, hardpan, or rock. The well shall be constructed so a to prevent the entrance of surface water and contaminant

[2] The recommendations or requirements of the local healt authority shall apply.

[3] This clearance may be reduced to 15 feet only where th ground surface is effectively separated from the water bea ing formation by an extensive, continuous and impervious strata of clay, hardpan, or rock.

(4) *Well construction.* (i) The wel shall be constructed so as to allow the pump to be easily placed and to func tion properly.

(ii)(A) All drilled wells shall be pro vided with a sound, durable and water tight casing capable of sustaining the loads imposed.

(B) The casing shall extend from a point several feet below the water level at drawdown or from an impervi ous strata above the water level to th

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in. above either the ground surface or the pump room floor. The casing shall be sealed at the upper opening to a depth of at least 15 feet.

(iii) Bored wells shall be lined with concrete, vitrified clay or equivalent materials.

(iv) The space between the casing or liner and the wall of the well hole shall be sealed with cement grout.

(v) The well casing shall not be used to convey water except under positive pressure. A separate drop pipe shall be used for the suction line.

(vi) When sand or silt is encountered in the water-bearing formation, the well shall either be compacted and gravel packed, or a removable strainer or screen shall be installed.

(vii) The surface of the ground above and around the well shall be compacted and graded to drain surface water away from the well.

(viii) Openings in the casing, cap, or concrete cover for the entrance of pipes, pumps or manholes shall be watertight.

(ix) If a breather is provided, it shall extend above the highest level to which surface water may rise. The breather shall be watertight, and the open end shall be screened and positioned to prevent entry of dust, insects and foreign objects.

(5) *Pump and equipment.* (i) Pumps shall be capable of delivering the volume of water required under normal operating pressure within the living unit. Pump capacity shall not exceed the output of the well.

(ii) Pumps and equipment shall be mounted to be free of objectionable noises, vibrations, flooding, pollution, and freezing.

(iii) Suction lines shall terminate below maximum drawdown of the water level in the well.

(iv) Horizontal segments of suction line shall be placed below the frost line in a sealed casing pipe or in at least 4 in. of concrete. The distance from suction line to sources of pollution shall be not less than shown in the table at paragraph (f)(3)(iv) of this section.

(6) *Storage tanks.* (i) A pressure tank having a minimum capacity of 42 gallons shall be provided. However, prepressured tanks and other pressurizing devices are acceptable provided that delivery between pump cycles equals or exceeds that of a 42 gallon tank.

(ii) Tanks shall be equipped with a clean-out plug at the lowest point, and a suitable pressure relief valve.

[50 FR 39594, Sept. 27, 1985, as amended at 53 FR 11271, Apr. 6, 1988]

§ 200.926e Supplemental information for use with the CABO One and Two Family Dwelling Code.

The following shall be used in Table No. R-202, Climatic and Geographic Design Criteria of the CABO One and Two Family Dwelling Code.

(a) *Roof live loads.*

Roof slope 3 in 12 or less: 20 psf
Roof slope over 3 in 12: 15 psf
Roof used as deck: 40 psf

(b) *Roof snow load.* The roof snow load shall be in accordance with section 7 of ANSI A58.1-82.

(c) *Wind pressures.* The minimum Design Wind Pressures (net pressures) set forth below apply to areas designated as experiencing basic wind speeds up to and including 80 mph, as shown in ANSI A58.1-82, Figure 1, Basic Wind Speed Map. These pressures also apply to buildings not over 30 ft. in height above finish grade, assuming exposure C or defined in ANSI A58.1-82.

(1) *Minimum design wind pressure criteria.* (i) Buildings (for overturning racking or sliding); p=20 psf.

(ii) Chimneys, p=30 psf.

(iii) Exterior walls, p=15 psf inward or outward. Local pressure at corners of walls shall be not less than p=30 psf outward. These local pressures shall not be included with the design pressure when computing overall loads. The pressures shall be applied perpendicularly outward on strips of width equal to 10 percent of the least width of building.

(iv) Partitions, p=10 psf.

(v) Windows, p=20 psf inward or outward.

(vi) Roof, p=20 psf inward or outward.

Roofs with slopes greater than 6 in 12 shall be designed to withstand pressures acting inward normal to the sur-

face, equal to the design wind pressure for exterior walls. Overhanging eaves, cornices, and ridges, 40 psf upward normal to roof surface. These local pressures shall not be included with the design pressure when computing overall loads. The pressures shall be applied perpendicularly outward on strips of width equal to 10 percent of the least width of building. Net uplift on horizontal projection of roof shall not be less than 12 psf.

(2) *Severe wind design pressures.* If the construction is higher than 30 ft., or if it is located in an area experiencing wind speeds greater than 80 mph, higher design wind pressures than shown above are required. Use Section 6 of ANSI A58.1–82 for higher criteria and for determining where wind speeds greater than 80 mph occur. Pressures are assumed to act horizontally on the gross area of the vertical projection of the structure except as noted for roof design.

(d) Seismic conditions shall be in accordance with Section 9 of ANSI A58.1–82.

(e) *Subject to damage from: weathering.* A jurisdiction's weathering region shall be as established by the map in ASTM C 62–83.

(f) *Subject to damage from: frost line depth.* Exterior wall footings or foundation walls including those of accessory buildings shall extend a minimum of 6 in. below the finished grade and, where applicable, the prevailing frost line.

(g) *Subject to damage from: termites.* "Yes" shall be used in locations designated as Regions I, II or III. "No" shall be used in locations designated as Region IV. The map for Termite Infestation Probability in Appendix A of CABO, One and Two Family Dwelling Code shall be used to determine the jurisdiction's region.

(h) *Subject to damage from: decay.* "Yes" shall be used in locations designated as moderate to severe and slight to moderate. "No" shall be used in locations designated as none to slight. The Decay Probability map in Appendix A of CABO, One and Two Family Dwelling Code shall be used to determine the jurisdiction's decay designation.

(Approved by the Office of Management and Budget under control number 2502-0338)

[50 FR 39599, Sept. 27, 1985]

§ 200.927 Incorporation by reference of minimum property standards.

The Minimum Property Standards as contained in the handbooks identified in § 200.929(b) are incorporated by reference into this section as though set forth in full in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

[50 FR 39592, Sept. 29, 1985]

§ 200.929 Description and identification of minimum property standards.

(a) *Description.* The Minimum Property Standards describe physical standards for housing. They are intended to provide a sound basis for determining the acceptability of housing built under the HUD mortgage insurance and low-rent public housing programs. The Minimum Property Standards refer to material standards developed by industry and accepted by HUD. In addition, under Section 521 of the National Housing Act, HUD adopts its own technical suitability standards for materials and products for which there are no industry standards acceptable to HUD. These standards are contained in Use of Materials Bulletins that apply to products and methods and Materials Releases that apply to specific materials. Use of Materials Bulletins and Materials Releases are addenda to the Minimum Property Standards. Unless otherwise stated, the current edition, issue, or version of each of these documents, as available from its source, is applicable to this Subpart S. A list of the Use of Materials Bulletins, Materials Releases, and MPS Appendix listing the applicable referenced Standards may be obtained from the Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 6170 Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410.

(b) *Identification.* The Minimum Property Standards have been published as described below:

(1) MPS for One and Two Family wellings. *See* §§ 200.926, 200.926 (a) rough (e).

(2) MPS for Housing 4910.1, 1984 ition with changes. This volume ap- ies to buildings and sites designed d used for normal multifamily occu- ncy, including both unsubsidized d subsidized insured housing, and to re-type housing insured under the ational Housing Act.

(3) Intermediate Minimum Property andards (IMPS) Supplement for lar Heating and Domestic Hot ater Systems, 4930.2, as revised by vision No. 1. This volume supple- ents the volumes listed in para- aphs (b) (1) and (2) of this section d deals only with aspects of plan- g and design that are different om conventional housing by reason the solar systems under consider- ion.

9 FR 26895, July 24, 1974, as amended at 3 FR 33890, July 1, 1977; 47 FR 29524, July 1982; 47 FR 35761, Aug. 17, 1982; 49 FR 695, May 1, 1984; 50 FR 39592, Sept. 29, 986; 51 FR 28699, Aug. 11, 1986]

200.931 Statement of availability.

An updated copy of the Minimum roperty Standards is available for ublic examination in (1) the Informa- on Center, Room 1202, Department f Housing and Urban Development, 51 Seventh Street, SW., Washington, .C., and in each HUD Regional, Area, nd Insuring Office; and (2) the Office f the Federal Register, 1100 L Street, W., Room 8401, Washington, D.C. In ddition, copies of volumes 1, 2, and 3 f the Minimum Property Standards ay be purchased from the U.S. Gov- rnment Printing Office, Washington, .C. 20402.

39 FR 26895, July 24, 1974]

200.933 Changes in minimum property standards.

Changes in the Minimum Property Standards will generally be made very three months. Changes will be ade in accordance with HUD policy or the adoption of rules and regula- ions set forth in Part 10 of this title. Notice of such changes will be pub- lished in the FEDERAL REGISTER. As the hanges are made, they will be incor- porated into the volumes of the Mini- mum Property Standards to which they apply. The volumes available for public examination and for purchase will contain all changes up to the date of examination or purchase. An offi- cial, historic file of such changes will be available in the office of the Rules Docket Clerk in the HUD Central Office in Washington, D.C., and in each HUD Regional, Area, and Insur- ing Office. A similar copy of the stand- ards will also be maintained in the Office of the Federal Register, Wash- ington, D.C.

[39 FR 26895, July 24, 1974]

§ 200.934 User fee system for the technical suitability of products program.

(a) *General.* This section establishes fee requirements for the issuance of Structural Engineering Bulletins (SEBs), Mechanical Engineering Bul- letins (MEBs), Truss Connector Bulle- tins (TCBs), Area Letters of Accept- ance (ALAs), Materials Releases (MRs), and review of program admin- istrator applications submitted pursu- ant to § 200.935 of this title.

(b) *Filing address*—(1) *Applications containing payment.* When applica- tions for or correspondence concerning SEBs, MEBs, TCBs, MRs, or program administrator approval contain pay- ment, such applications or correspond- ence shall be sent to the following ad- dress:

Office of Finance and Accounting, Insur- ance Accounting Division, Cash and Secu- rities Section—MIA Department of Hous- ing and Urban Development, 451 7th Street, SW., Washington, DC. 20410

(2) *Other correspondence.* All other correspondence concerning SEBs, MEBs, TCBs, MRs, and program ad- ministrator acceptance shall be sent to the following address:

Manufactured Housing and Construction, Standards Division, Department of Hous- ing and Urban Development, 451 7th Street, SW., Washington, DC 20410

(3) *Application for ALAs.* Applica- tions for or correspondence concerning ALAs shall be submitted to the Hous- ing Division of the field office having jurisdiction over the area in which the production facility of the system is lo- cated, except that applications con-

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taining payment shall be addressed to the attention of the Collection Officer for deposit to Account No. 86-09-0300.

(c) *Fees.* Applicants for renewal and applicants for acceptance as program administrators under § 200.935 of this title shall include the entire processing fee with the application. All other applicants shall submit one half of the required processing fee with each application. The applicant shall pay the balance when the draft issuance is returned to HUD with the applicant's concurrence signature. The Department will not prepare a final document for printing and distribution until it has received the full processing fee. From time to time, as may be necessary, the Department will establish and amend the fee schedule by publication of a Notice in the FEDERAL REGISTER.

(d) *Initial application and review—*(1) *Content of applications.* Each application shall include only one item. All applications will be promptly processed on receipt by the Department.

(i) With respect to Mechanical Engineering Bulletins (MEBs), Structural Engineering Bulletins (SEBs), Truss Connector Bulletins (TCBs), and Area Letters of Acceptance (ALAs), each structural design shall constitute a different item.

(ii) With respect to Materials Releases (MRs), each product or system shall constitute a different item.

(2) *Revisions.* A recipient of a technical suitability document issued by the Department may apply for revision of that document at any time. The revision may be in the form of an amendment of or supplement to the document, for which the recipient will be charged the applicable revision fee. However, where the Department determines that a proposed revision constitutes a different item, the schedule of fees for initial applications shall apply.

(3) *Renewals.* Each issuance shall be valid for a period of three years from the date of initial issuance or most recent renewal, whichever is later. An applicant shall submit an application for renewal with the entire required fee three months before the expiration of the three-year period. Failure to submit a timely renewal application along with the required fee shall co stitute a basis for cancellation of t issuance.

(4) *Initial and revision applicatio requiring further study or additiona data.* In its discretion, the Departme may request an applicant to subm additional data or to conduct furth study to supplement or clarify an in tial application or an application fo revision of a previously issued techn cal suitability document. If the appli cant fails to comply with the Depart ment's request within ninety days o the date of that request or within such longer time as may be specified by th Secretary, the Department will retur the application to the applicant. Th Department will not refund any fee paid toward an application returne under this paragraph. The applicatio will be considered further only if it i resubmitted along with payment o the full fee as required by these regu lations.

(5) *Ineligible applications.* If th Secretary determines that an applica tion or request will not be considered because it is not eligible for issuance of a technical suitability document the Department will promptly return the application or request, refund an fees paid, and explain why the applica tion or request is ineligible.

(6) *Cancellation of a technical suit ability document.* If the Departmen determines that (i) the condition under which a technical suitability document was issued have so changed as to affect the production of, or t compromise the integrity of, the mate rial, product, or system approved thereby, or (ii) that the producer ha changed its organizational form with out notifying HUD, or (iii) that th producer is not complying with the re sponsibilities it assumed as a condition of HUD's acceptance of its material product or system, the Departmen will notify the producer or manufac turer that the technical suitability document may be cancelled. However before cancelling a technical suitabil ity document, the Department will give the manufacturer reasonable notice in writing of the specific rea sons therefore and an opportunity to present its views on why the technica suitability document should not be

cancelled. No refund of fees will be made on a cancelled document.

(e) *Identification.* (1) Applications for issuance of a MEB, SEB, TCB, or MR submitted to HUD Headquarters will be identified with a case number. The applicant will be notified of the case number when receipt of the application is acknowledged. Thereafter, the case number will be used on all correspondence relating to the application. When a final draft of a new document is prepared for publication and distribution, a bulletin or release number will be assigned to the new issuance.

(2) In the case of an application for an ALA submitted to a field office, the application will be processed in accordance with the identification and processing procedures established by the responsible field office. The field office will notify the applicant of receipt of the application and inform the applicant of the procedures that will be followed with respect to the issuance of an ALA.

[The information collection requirements contained in paragraphs (b), (c), (d) (1), (2), (3) and (4) were approved by the Office of Management and Budget under control number 2502-0313]

[49 FR 31856, Aug. 9, 1984]

§ 200.935 Administrator qualifications and procedures for HUD building products certification programs.

(a) *General.* This section establishes administrator qualifications and procedures for the HUD Building Products Certification Programs under section 521 of the National Housing Act and the HUD Minimum Property Standards. Under these programs organizations acceptable to HUD validate manufacturers' certifications that certain building products or materials meet applicable standards. HUD may decide to implement a certification program for a particular building product or material for a variety of reasons, such as when deemed necessary by HUD to facilitate the introduction of new and innovative products or materials; or in response to reports of fraud or misrepresentation by manufacturers in advertising that their product or materials comply with a standard.

(b) *Definitions*—(1) *Certification program ("program").* The procedure under which accepted administrators validate manufacturers' certifications that particular building products or materials meet applicable HUD standards. A separate program is used to validate certifications for each particular product or material for which HUD requires certifications.

(2) *Program administrator ("administrator").* An organization which conducts the program validating the manufacturer's certification that a particular building product or material meets applicable HUD standards.

(c) *Administrator qualifications and application procedures*—(1) *Qualifications.* Each program administrator shall be capable of conducting a certification program with respect to organization, staff and facilities, and have a reputation for adhering to high ethical standards. To be considered acceptable for conducting a certification program, each administrator shall:

(i) Be a technically qualified organization with past experience in the administration of certification programs. The certification program(s) shall be under the supervision of a qualified professional with six years of experience in interpreting testing standards, test methods, evaluating test reports and quality control programs. Each administrator is responsible for staffing the program with qualified professional personnel with experience in interpreting testing standards, test methods, evaluating test reports and quality control programs. The staff shall be adequate to service all aspects of the program.

(ii) Have field inspectors trained to make selections of materials for testing from manufacturer's stock or from distributors' establishments and to conduct product compliance inspections. Such inspectors must be trained and experienced in evaluating manufacturer's quality control records to ascertain with a reasonable degree of assurance that continuing production remains in compliance with the applicable standard set forth in the Use of Materials (UM) Bulletin. When inspectors are used to evaluate laboratory operations, they shall be qualified and under the supervision of the adminis-

trator. They shall be knowledgeable in such areas as test methods, quality control, testing techniques, and instrument calibration.

(iii) Have facilities and capabilities for communications with manufacturers, laboratories, and HUD, including publication of a directory of certified products and a list of accredited laboratories, if required by the program.

(iv) Have adequate policies and practices for preserving information entrusted to its care. HUD reserves the right to review all technical records related to the program for the purpose of monitoring.

(v) Have a copy of all applicable standards, test methods and related information necessary to carry out the program.

(vi) Have a registered or pending certification mark at the United States Patent Office and be willing to license, on a uniform basis, the use of that mark by manufacturers as a validation of the manufacturer's certification that the product complies with the applicable standard.

(2) *Applications procedures.* Any organization desiring HUD acceptance as a qualified administrator to conduct a certification program shall make application in writing to the Director, Office of Architecture and Engineering Standards. The application shall state the particular certification program for which acceptance is requested and include information indicating compliance with each of the qualification requirements by number and subsection. Attached to the application shall be:

(i) A list of certification programs in which the organization is participating or has participated and the types of participation (sponsor, administrator, testing laboratory, etc.).

(ii) A procedural guide used in one of these programs.

(iii) A directory or listing used in one of these programs.

(iv) A reproduction or facsimile of the organization's registered or pending mark.

(v) A proposed procedural guide for the particular certification program. HUD certification program procedures described in paragraph (d) of this section shall be followed.

(3) *Acceptance.* HUD shall review each submission and notify the applicant whether or not they are accepted or rejected. HUD shall be notified immediately of any change(s) in the administrator's submission regarding program procedures and/or major personnel associated with the program. HUD reserves the right to suspend or debar an administrator in accordance with Part 24 of this title.

(d) *HUD building products certification procedures*—(1) *Certification program development.* Certification program development by an administrator shall be based upon the procedures and standards for the specific building product described in a Use of Materials Bulletin or a Materials Release.

(2) *License agreement.* Each administrator shall have a written license agreement with each participating manufacturer binding each to the provisions of the specific program and authorizing the manufacturer to use the administrator's mark, seal, or label on its products. The administrator shall have the right to terminate any agreement prior to an expiration date, for example, if there has been a breach of the requirement of the certification program by the manufacturer.

(3) *Laboratory approval.* The administrator shall review laboratories that apply for participation in this program on the basis of the procedures described in paragraph (e) of this section. A list of approved laboratories shall be maintained by the administrator. When the certification program allows the use of the administrator's testing laboratories, the laboratories shall be reviewed by a qualified party acceptable to HUD. As accreditation procedures are made available through the National Voluntary Laboratory Accreditation Program (NVLAP) for specifc products, HUD may require such accreditation.

(4) *Initial testing and quality control review*—(i) *Initial testing.* Each participating manufacturer shall submit to the appropriate administrator, the product(s) specification and statement(s) that the product complies with the applicable standard. The administrator shall select samples of the product(s), or when HUD specifies as acceptable, a prototype. The

rticular method of sample selection all be determined by HUD for each ecific product certification program. ther methods of initial sample selecn may be used if deemed necessary. a failure occurs on the initial tests, ditional sampling and testing may done at the manufacturer's request. e administrator's validation of the nufacturer's declaration of certifiion shall be withheld until a findg of compliance is achieved.

(ii) *Quality control review.* Each administrator shall examine participatg manufacturer's facilities and qualy control procedures to determine at they are adequate to assure conuing production of products that all comply with the applicable ndard. These quality control proceres shall be documented in the adinistrator's and manufacturer's files. a manufacturer's quality control stem is not satisfactory to the adinistrator, validation of the manucturer's declaration of certification all be withheld.

(5) *Notice of validation.* When inial testing, quality control review, and aluation of other technical data are tisfactory to the administrator, a tice of Validation or Certification all be issued to the manufacturer. his allows the use of the administrar's registered mark on the product bel.

(6) *Labeling.* Each administrator all issue to the manufacturer labels, gs, marks containing the administrar's validation mark, and the manucturer's certification of compliance ith the applicable standard. The regered administrator's (validator's) ark shall be on the label. A sponsor's sociation, testing agencies, society others) mark may be used in addion to the administrator's mark. The anufacturer's certification of compliice to the standard may be coded. dditional information such as type, rade, class, etc., may also be coded. hen coding is used, the code shall be escribed in the directory or listing

(7) *Directory or listing.* When reuired by the program, the administrtor shall publish a directory or listg for all certified products. The dirctory shall list the items described in aragraph (d)(6) of this section. The directly shall also carry a complete list of approved laboratories and shall be updated to reflect additions or deletions of certified products and laboratories. Directories or listings shall be published periodically as described in the specific program. Each administrator shall make a complimentary distribution of the directory or listing to the HUD Field Offices and other government agencies designated by HUD. A subscription fee may be charged to others requesting copies.

(8) *Periodic tests and quality control inspections.* Samples of the certified product or prototype shall be selected periodically from the plant, warehouse inventory or sales points. The samples shall be sent to an administrator-approved laboratory and tested in accordance with the applicable standard. The frequency of testing shall be described in the specific building product program. The administrator shall periodically visit the manufacturer's facility to assure that the initially accepted quality control procedures are being followed.

(9) *Product decertification.* If a failure should occur in any test, the laboratory shall notify the administrator and the manufacturer. The manufacturer shall notify the administrator if a retest if requested. If a retest is not requested, validation shall be withdrawn. If the manufacturer requests a retest, the administrator shall select new samples and submit them to the same or another laboratory at the manufacturer's expense, for retest of only the test requirement(s) in which the failure(s) occurred. If the specified number of specimens pass the retest, the product can continue to be validated and listed. If the designated number of specimens described in the UM Bulletin fail, the administrator shall decertify the product. The manufacturer may request that a new selection be made of the product after corredction or modifications and be subjected to the initial acceptance testing procedure or to a program of retesting established by the administrator. The administrator may decertify the product on the basis of inadequate quality control by the manufacturer. The administrator shall notify the manufacturer, HUD headquarters and the

HUD Field Offices of any decertification within 7 days. When the product is decertified the maqnufacturer shall remove labels, tags or marks from all production and inventory in his/her control determined to be in noncompliance.

(10) *Challenge response.* Any person or organization may submit a sample of a manufacturer's certified product to the administrator in substantiation of a claim of noncompliance. Submission shall be made to the administrator that validated the manufacturer's product. The administrator shall notify the manufacturer that its product has been challenged and shall make arrangements to obtain test samples of the challenged product. An estimate of the cost of the special sample selection and testing shall be made to the complainant. The complainant shall pay the estimated cost of the investigation in advance of any testing of the challenged product, unless HUD believes the complaint to be in the public's interest. HUD may conduct its own investigation when deemed necessary based upon a complaint or a product failure. The administrator shall submit the sample of the challenged product to an approved laboratory of the administrator's choice with the request to test compliance of only the challenged requirement(s). If the samples tested prove that the product failed to meet the standard, the product shall be decertified immediately. The manufacturer whose product is decertified shall reimburse the administrator for all costs of the investigation and the administrator shall refund the complainant's advance payment. If the tests prove that the product does comply with the standard, the complainant shall be notified that the tests do not support the complaint and that the advance fee has been used for the cost of testing and investigating the claim.

(11) *Maintainance of the program.* Each administrator shall maintain the program in conformance with administrative letters issued by HUD for the purpose of clarifying procedures and interpreting the applicable standard. These letters may also be used to revise and amend the procedures used in specific programs. Significa changes in any program shall be pu lished in the FEDERAL REGISTER.

(e) *Laboratory qualifications.* T following laboratory qualificatio apply to all testing laboratories pa ticipating in the program includi manufacturer's laboratories and th administrator's own laboratories wh designated in the specific program.

(1) *Organization and personn* Laboratories wishing to participate a certification program shall apply the administrator and shall furni the following information:

(i) Name of laboratory, address, te phone number, name and title of off cial to be contacted for this program.

(ii) Name and qualifications person assigned by the laboratory t supervise testing under a specific cert fication program.

(iii) Name and qualifications of eng neers and other key personnel wh shall conduct the testing.

(iv) Brief review of training progra for personnel associated with progra to assure the operational efficienc and uniformity of the testing an quality control procedures.

Each laboratory shall notify the ad ministrator of any change in its sub mission regarding procedures and/o major personnel associated with th program.

(2) *Equipment and facilities.* Eac laboratory shall:

(i) Describe the test instruments an testing facilities to be used in makin the test(s) required by the applicabl standard. Information shall include Item of equipment, manufacture type or model, serial number, rang precision, frequency of calibration an dates of calibration.

(ii) Provide photographs of th listed equipment.

(iii) Provide a description of the ap plicable standards and calibratio equipment being used and the calibra tion procedures followed, including National Bureau of Standards traceb bility, when applicable. List outside or ganizations providing calibration serv ices, if used.

(iv) Demonstrate that measurement can be made with existing equipment and repeated precision within th

limits established by the applicable standards. Administrator may periodically require laboratories to conduct collaborative testing on standard reference materials.

(v) Provide evidence, when regulated temperatures and humidity are required, that charts are maintained from a continuous recorder registering both wet and dry bulb temperature or relative humidity. The charts are to be properly dated, retained and available for inspection.

(vi) Provide a list of standards, test methods and other information necessary to carry out the program.

(3) *Testing methodology.* (i) Describe concisely the procedures for conducting the tests required and the specific equipment to be used.

(ii) Attach a sample test report showing representative test results and accompanied by test data forms for each test required. When approved for program participation, testing laboratories may be required by administrator to report test results on standard summary report forms.

(4) *Subcontractors.* If a testing laboratory plans to subcontract any of its testing to other laboratories, only approved laboratories acceptable to the administrator shall be used.

(5) *Laboratory quality control.* The laboratory shall develop operating quality control procedures acceptable to the administrator. The procedures of the American Council of Independent Laboratories[1] may be used as a guideline.

(6) *Approval of laboratories.* Administrators shall develop detailed laboratory approval requirements and conduct periodic inspections to assure each test laboratory's capability. Laboratory approval may be granted for 2 years. Reapproval of the laboratory shall be necessary every 2 years. When a program allows the use of an administrator's own laboratories, these laboratories shall be reviewed by a qualified third party acceptable to HUD. Documentation of acceptance for administrator laboratories shall be maintained by the administrator and HUD. Administrator laboratories shall be subject to reapproval every two years.

(7) *Withdrawal of approval.* Laboratory approval shall be withdrawn or temporarily suspended if it is determined that the laboratory is not complying with the approved requirements. Causes for suspension include, but are not limited to, the following:

(i) Incompetence.

(ii) Failure to test in accordance with the test methods described in the standard.

(iii) Issuance of test reports which fail to comply with the requirements described in the specific product certification program.

(iv) Falsification of the information reported.

(v) A statement implying validation of the product using a test report which constitutes only part of the total standard.

(vi) Deceptively utilizing references in advertising or other promotional activities.

(vii) Submission of incomplete or inadequate information and documentation called for herein.

[44 FR 54656, Sept. 20, 1979]

§ 200.936 Supplementary specific procedural requirements under HUD building products certification program for solid fuel type room heaters and fireplace stoves.

(a) *Applicable standards.* Solid fuel type room heaters and fireplace stoves certified under the HUD Building Products Certification Program shall be designed, assembled and tested in conformance with the following standards, which are incorporated by reference:

(1) ANSI/UL 737 (1978), for fireplace stoves;

(2) ANSI/UL 1482 (1979), for solid fuel type room heaters with coal amendments.

(b) *Labelling.* (1) Under the procedures set forth in paragraph (d)(6) of § 200.935, concerning labelling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the admin-

[1] Copies are available from the American Council of Independent Laboratories, Inc., 1725 "K" Street, NW., Washington, D.C. 20006.

istrator to the manufacturer. In the case of solid fuel type room heaters and fireplace stoves, the following additional information must be included on the certification label:

(i) The manufacturer's statement of conformance to the HUD Building Products Certification Program;

(ii) The manufacturer's name and the identity and location of manufacturing plant;

(iii) The specification designation and manufacturer series or model number; and

(iv) The type of fuel to be used.

(2) The certification label must be permanently affixed to the heater or stove and be readily visible after the heater or stove is installed.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in paragraph (d)(8) of § 200.935, concerning periodic tests and quality control inspections, the frequency of testing for a product must be described in the specific building product certification program. In the case of solid fuel type room heaters and fireplace stoves, testing and inspection shall be conducted as follows:

(1) Once every four years, beginning with the initial administrator visit, a sample of each certified product shall be selected by the administrator for testing for compliance with the applicable standards in a laboratory which has been accredited under the National Voluntary Laboratory Accreditation Program.

(2) The administrator shall visit the manufacturer's facility two times a year to assure that the initially accepted quality control procedures are being followed.

[48 FR 1955, Jan. 17, 1983]

§ 200.937 Supplementary specific procedural requirements under HUD building product standards and certification program for plastic bathtub units, plastic shower receptors and stalls, plastic lavatories, plastic water closet bowls and tanks.

(a) *Applicable standards.* (1) Plastic bathtub units, plastic shower receptors and stalls, plastic lavatories, and plastic water closet bowls and tanks shall be designed, assembled and tested in compliance with the following standards, which are incorporated by reference:

ANSI Z124.1—(1980) Plastic Bathtub Units
ANSI Z124.2—(1980) Plastic Shower Receptors and Stalls
ANSI Z124.3—(1980) Plastic Lavatories
ANSI Z124.4—(1983) Plastic Water Closet Bowls and Tanks

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. The standards are also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

(b) *Labeling.* (1) Under the procedures set forth in paragraph (d)(6) of § 200.935, concerning labeling of the product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. In the case of plastic bathtub units, plastic shower receptors and stalls, plastic lavatories, and plastic water closet bowls and tanks, the following additional information shall be included on the certification label:

(i) Manufacturer's statement of conformance to UM 73a;

(ii) Manufacturer's name and code identifying the plant location.

(2) The certification label shall be affixed to each plastic bathroom fixture.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in paragraph (d)(8) of § 200.935, concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of plastic bathroom fixtures, testing and inspection shall be conducted as follows:

(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample of each certified plastic bathtub unit, plastic shower receptor and stall, plastic water closet bowl and tank for testing

an approved laboratory, in accordance with applicable standards.

(2) At least every twelve months, the administrator shall visit the manufacturer's facility to select a sample of each certified plastic lavatory for testing in accordance with applicable standards.

(3) The administrator shall also review quality control procedures at each visit to determine that they continue to be followed.

[49 FR 378, Jan. 4, 1984]

§ 200.938 Supplementary specific procedural requirements under HUD building product standards and certification program for aluminum windows, storm windows, sliding glass doors and storm doors.

(a) *Applicable standards.* (1) Aluminum windows, storm windows, sliding glass doors and storm doors certified for this program shall be designed, assembled, and tested in conformance with the following American National Standards Institute/Architectural Aluminum Manufacturer's Association (ANSI/AAMA) standards:

ANSI/AAMA 302.9–1977 Specifications for Aluminum Prime Windows.
ANSI/AAMA 402.9–1977 Specifications for Aluminum Sliding Glass Doors.
ANSI/AAMA 1002.10–1983 Specifications for Aluminum Insulating Storm Products for Windows and Sliding Glass Doors.
ANSI/AAMA 1102.7–1977 Specifications for Aluminum Storm Doors.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the American National Standards Institute, Inc, 1430 Broadway, New York, NY 10018. The standards are also available for inspection at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20406.

(b) *Labeling.* (1) Under the procedures set forth in paragraph (d)(6) of § 200.935, concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. In the case of aluminum windows, storm windows, sliding glass doors and storm doors, the following additional information shall be included on the certification label:

(i) The manufacturer's statement of conformance to the appropriate referenced ANSI/AAMA standard.

(ii) The manufacturer's name and the code identifying plant location.

(2) The specification label shall be permanently affixed to each aluminum window, storm window, sliding glass door and storm door.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in paragraph (d)(8) of § 200.935, concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of aluminum windows, storm windows, sliding glass doors and storm doors, testing and inspection shall be conducted as follows:

(1) At least every fours years, a sample unit of the maximum size commerically available and submitted for certification, shall be selected by the administrator for testing by an approved laboratory, in accordance with the applicable standard.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality procedures continue to be followed.

[49 FR 377, Jan. 4, 1984]

§ 200.939 Supplementary specific procedural requirements under HUD building products standards and certification program for wood window units and wood sliding patio doors.

(a) *Applicable standards.* (1) Wood window units and wood sliding patio doors certified under this program shall be designed, assembled and tested in conformance with the following American National Standards Institute/National Wood Manufacturer's Association (ANSI/NWMA) standards:

(i) ANSI/NWMA I.S. 2–80 (1980) Industry Standard for Wood Window Units.

(ii) ANSI/NWMA I.S. 3–70 (1976) Industry Standard for Wood Sliding Patio Doors.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. The standards are also available for inspection at the Office of the Federal Register, 1100 L Street NW., Room 8401 Washington, D.C. 20408.

(b) *Labeling.* (1) Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. In the case of wood window units and wood sliding patio doors, the following additional information shall be included on the certification label:

(i) The manufacturer's certification of compliance with the applicable ANSI/NWMA standard.

(ii) The manufacturer's name and a code identifying the manufacturing plant location.

(2) The certification label shall be affixed to each wood window unit and wood sliding patio door and shall be located so that it is available for future identification; a visible, exposed location is not required.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of wood windows units and wood sliding patio doors, testing and inspection shall be conducted as follows:

(1) At least once every four years, beginning with the initial administrator visit, a sample unit of the maximum size commercially available which is to be certified shall be selected by the administrator and tested for compliance with the applicable standards. Testing shall be conducted in an approved laboratory.

(2) At least once every six months, the administrator shall visit the manufacturer's facility and review quality control procedures to determine t they provide a level of quality cont which is equivalent or superior to t provided by the procedures whi were initially accepted.

[49 FR 24123, June 12, 1984]

§ 200.940 Supplementary specific pro dural requirements under HUD bui ing product standards and certificati program for sealed insulating gl units.

(a) *Applicable standards.* (1) Seal insulating glass units shall be d signed, assembled and tested in co pliance with the following Americ Society of Testing and Materia (ASTM) standards:

ASTM E-546-75—Standard Test Meth for Frost Point of Sealed Insulating Gla Units;

ASTM E-773-81—Standard Test Meth for Seal Durability of Sealed Insulati Glass Units; and

ASTM E-774-81—Specification for Seal Insulating Glass Units.

(2) These standards have been a proved by the Director of the FEDERA REGISTER for incorporation by refe ence. They are available from th American Society for Testing Mater als (ASTM) 1916 Race St. Philade phia, PA 19103. The standards are al available for inspection at the Offic of the Federal Register, 1100 L Stree NW., Room 8401, Washington, D.C 20408.

(b) *Labeling.* (1) Under the proc dures set forth in paragraph (d)(6) § 200.935, concerning labeling of product, the administrator's validatio mark and the manufacturer's certifica tion of compliance with the applicabl standards are required to be on th certification label issued by the admi istrator to the manufacturer. In th case of sealed insulating glass unit the following additional informatio shall be included on the certificatio label:

(i) The manufacturer's statement conformance to the appropriate refe enced ASTM standard.

(ii) The manufacturer's name an code identifying the plant location.

(2) The certification label shall b affixed to each sealed insulating gla unit.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in § 200.935(d)(8), concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of sealed insulating glass units, testing and inspection shall be conducted as follows:

(1) At least every twelve months, beginning with the initial administrator visit, a sample of each certified sealed insulated glass unit shall be selected by the administrator for testing in an approved laboratory, in compliance with the applicable standards.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality procedures continue to be followed.

[49 FR 376, Jan. 4, 1984]

§ 200.941 Supplementary specific building product standards and certification program for PVC window units.

(a) *Applicable standards.* (1) PVC window units shall be designed, assembled and tested in accordance with the following standard:

ASTM D 4099-82 Standard Specification for Poly(Vinyl Chloride) (PVC) Prime Windows

In addition, the following are required:

(i) Weatherstrip shall be replaceable;

(ii) PVC resin compound shall comply with requirements of ASTM D 4216-83, Class 1-154-33-00, 1-231-13-00, and 1-431-13-00, The manufacturer shall certify that it has been tested for five or more years of outdoor exposure with no chipping, cracking peeling or other evidence of poor performance.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference, and is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19013. The standard is also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

(b) *Labeling.* (1) Under the procedures set forth in § 200.935(d)(6), concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard is required to be on the certification label issued by the administrator to the manufacturer. In the case of PVC window units, the following additional information shall be included on the certification label:

(i) Manufacturer's statement of conformance to the ASTM standard.

(ii) Manufacturer's name and code identifying the plant location.

(2) The certification label shall be affixed to each PVC window unit and located so that it is available for future identification. A visible location is not required.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific Building Product Standards and Certification Program. In the case of PVC window units, testing and inspection shall be conducted as follows:

(1) At least every four years, a production unit of the maximum size commercially available, which has been submitted for certification shall be selected by the administrator for testing by an approved laboratory, in accordance with the applicable standard.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality control procedures continue to be followed.

[49 FR 31853, Aug. 9, 1984]

§ 200.942 Supplementary specific procedural requirements under HUD building product standards and certification program for carpet and carpet with attached cushion.

(a) *Applicable standards.* (1) Carpet and carpet with attached cushion certified for this program shall be designed, manufactured and tested in accordance with the following standards:

(i) AATCC 20A-81—Fiber Analysis: Quantitative;

(ii) AATCC 16E-82—Colorfastness to Light: Water-Cooled Xenon-Arc Lamp, Continuous Light;

(iii) AATCC 8-85—Colorfastness to Crocking: AATCC Crockmeter Method;

(iv) AATCC 24-85—Insect, Resistance to Textiles to;

(v) ASTM D1335-67 (Reapproved 1972)—Standard Test Method for Tuft Bind of Pile Floor Coverings;

(vi) ASTM D3676-78 (Reapproved 1983)—Standard Specification for Rubber Cellular Cushion Used for Carpet or Rug Underlay;

(vii) ASTM E648-78—Standard Test Method for Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source;

(viii) ASTM D2646-79—Standard Methods of Testing Backing Fabrics;

(ix) ASTM D3936-80—Standard Test Method for Delamination Strength of Secondary Backing of Pile Floor Coverings;

(x) ASTM D297-81—Standard Methods for Rubber Products—Chemical Analysis;

(xi) ASTM D418-82—Standard Methods of Testing Pile Yarn Floor Covering Construction; and

(xii) National Bureau of Standards DOC FF 1-70. (ASTM D2859-76)—Standard Test Method for Flammability of Finished Textile Floor Covering Materials.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the (i) American Association of Textile Chemists and Colorists (AATCC), P.O. Box 12215, Research Triangle Park, NC. 27709;

(ii) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103; and

(iii) U.S. Department of Commerce, National Bureau of Standards, Washington, DC 20234.

The standards are also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

(b) *Labeling.* (1) Under the procedures set forth in § 202.935(d)(6), concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applied standard is required to be on the certification label issued by the administrator to the manufacturer. In the case of carpet and carpet with attached cushion, the following additional information shall be included on the certification label, mark or stamp:

(i) Manufacturer's name or code identifying the manufacturing plant location; and

(ii) Manufacturer's statement of compliance with UM 44d.

(2) The certification mark shall be applied to each carpet at intervals of at least every six feet, not less than one foot from the edge.

(c) *Periodic tests and quality control inspections.* (1) Five samples of carpet and carpet with attached cushion shall be tested annually by the administrator or by an administrator-approved laboratory. Three samples of each certified quality shall be taken from the plant annually. Of these, two shall be interim samples (taken every six months) and one an annual sample. In addition, two samples of each certified quality shall be taken annually from sources other than the manufacturer, *i.e.*, brought in the market place from distributors or stores, not from the factory. The administrator shall select samples for testing, and testing shall be conducted, in accordance with the applicable standards in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards, U.S. Department of Commerce.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality control procedures continue to be followed.

[51 FR 17928, May 16, 1986]

§ 200.943 Supplementary Specific Procedural Requirements Under HUD Building Product Standards and Certification Program for the Grademarking of Lumber.

(a) *Applicable standards.* (1) Lumber shall be grademarked in accordance with the following standard:

U.S. Department of Commerce Voluntary Product Standard PS 20-70 "American Softwood Lumber Standard"

This standard has been approved by the Director of the Federal Register for incorporation by reference. It is available from the National Bureau of Standards, Gaithersburg, Maryland 20143. The standard is also available for inspection at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(b) *Labeling or marking.* (1) Under the procedures set forth in § 200.935(d)(6), concerning labeling or marking of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard is required on the certification label issued by the administrator to the manufacturer. However, in the case of grademarking of lumber, the following information shall be included on the certification label or mark;

(i) The registered symbol which identifies the grading agency;

(ii) Species or species combination;

(iii) Grade;

(iv) Identification of applicable grading rules when not indicated by the species identification or agency symbol;

(v) Mill or grader;

(vi) For members which are less than 5" nominal thickness, indication that the lumber was green or dry at the time of dressing; and

(vii) Indication that the lumber is finger jointed, where applicable.

(2) The certification mark shall be affixed to each piece of lumber.

(c) *Periodic tests and quality control inspections.* Periodic tests and quality control inspections shall be carried out by the Board of Review of the American Lumber Standards Committee as defined in PS 20-70.

[51 FR 1369, Jan. 13, 1986]

Subpart T—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in Assisted Mortgage and Loan Insurance and Related Programs

SOURCE: 54 FR 39687, Sept. 27, 1989, unless otherwise noted.

§ 200.1001 Summary and purpose.

(a) *Summary.* (1) This subpart implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the assisted mortgage and loan insurance and related programs administered by the Departmment of Housing and Urban Development under subchapter B of this chapter. The programs covered by this subpart include the following: Assignment of Mortgages to HUD under part 203, subpart C; Occupied Conveyance under part 203, subpart C; Rent Supplement under part 215; Management of HUD-acquired multifamily properties under part 290; and the rental and homeownership assistance programs under sections 221(d)(3) (BMIR), 235 and 236 of the National Housing Act.

(2) This subpart requires applicants that seek to receive, and certain recipients of, housing assistance under any of the covered programs to disclose, and to submit documentation to verify, their Social Security Numbers. Individuals, certain officials of corporations and other entities, and entities that seek to participate as private owners in certain programs subject to this subpart must disclose and verify their Social Security or Employer Identification Numbers, as appropriate. The failure of any person or entity to make the required disclosure and verification constitutes grounds for denial of eligibility, or termination of assistance or tenancy (or both), under the program involved.

(3) Section 165 is implemented for the unassisted mortgage and loan insurance and coinsurance programs administered by the Department under subchapter B of this chapter, at part 200, subpart U. The provision is imple-

mented for the section 8 Housing Assistance Payments programs administered by the Department under 24 CFR chapter VIII, and for the Public and Indian Housing programs administered by the Department under 24 CFR chapter IX, at 24 CFR part 750; and for the section 312 Rehabilitation Loan program, at 24 CFR part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use Social Security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the covered programs. Specific examples of how the Department may use Social Security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for the previous or current participation of a person or entity in other programs.

(4) Identifying persons or entities in the records of other Federal agencies for the purpose of obtaining information on their eligibility for, or level of benefits in, the Department's programs.

(5) Identifying persons or entities for the purpose of requesting information about them from other government or private sources during an audit or investigation.

(6) Validating the identity of a person or entity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the program involved and that the level of benefits provided is appropriate.

(Approved by the Office of Management and Budget under control number 2502-0059)

§ 200.1003 Applicability.

This subpart applies to the following housing assistance programs contained in subchapter B of this chapter:

(a) *Part 203, subpart C,* Assignment of Mortgages to HUD.

(b) *Part 203, subpart C,* Occupied Conveyance.

(c) *Part 215,* Rent Supplement Pa ments.

(d) *Part 221,* Low Cost and Moderat Income Mortgage Insurance (BMIR).

(e) *Part 235,* Mortgage Insuran and Assistance Payments for Hom ownership and Project Rehabilitation

(f) *Part 236,* Mortgage Insurance an Interest Reduction Payments fo Rental Projects.

(g) *Part 290,* Management and Di position of HUD-Owned Multifamil Housing Projects.

§ 200.1005 Definitions.

As used in this subpart:

Assistance applicant has the follow ing meanings for the programs re ferred to in § 200.1003:

(a) *Part 203, subpart C, Assignme of Mortgages to HUD:* A mortgag who seeks TMAP or Assignment assis ance.

(b) *Part 203, subpart C, Occupie Conveyance:* An occupant who wishe to occupy a property after HUD ha acquired it.

(c) *Parts 215, 221(BMIR), 236, an 290:* An individual or family seeking rental assistance under any of the pro grams.

(d) *Part 235:* A homeowner or coop erative member seeking homeowne ship assistance (including where th individual seeks to assume an existin mortgage).

Assume an existing mortgage mean any assumption of a mortgage that i insured under section 221(BMIR), 23 or 236 (as appropriate) of the National Housing Act, irrespective of whether the assumption involves the release by the mortgagee of a previous mortgagor from personal liability on the mort gage note and the assumption of thi liability, and the agreement to pay the mortgage debt, by the mortgagor.

Employer Identification Numbe (EIN) means the taxpayer identifying number of an individual, trust, estate partnership, association, company, o corporation that is assigned pursuant to section 6011(b) of the Internal Rev enue Code of 1986, or correspondin provisions of prior law, or pursuant t section 6109 of the Code. The EIN ha nine digits separated by a hyphen a follows: 00-0000000.

Entity applicant means a partnership, corporation, or any other association or entity that seeks to participate as a private owner (including where the entity seeks to assume an existing mortgage) in 24 CFR part 215, 221 (BMIR), or 236. Entity applicant does not include a public entity, such as a PHA or a State Housing Finance Agency.

HUD or *Department* means the United States Department of Housing and Urban Development.

Individual owner applicant means an individual who seeks to participate as a private owner (including where the individual seeks to assume an existing mortgage) in 24 CFR part 215, 221 (BMIR), 235 (without homeownership assistance) or 236.

Participant has the following meanings for the programs referred to in § 200.1003:

(a) *Part 203, subpart C, Assignment of Mortgages to HUD:* A mortgagor who is receiving TMAP or whose mortgage has been assigned to HUD.

(b) *Parts 215, 221(BMIR), 236, and 290:* A tenant or a qualified tenant under any of the covered programs.

(c) *Part 235:* A homeowner or a cooperative member receiving homeownership assistance.

PHA means a State, county, municipality, or other governmental entity or public body (or agency or intrumentality thereof) which is authorized to engage or assist in the development or operation of housing for lower income families. PHA includes Indian Housing Authorities.

Processing entity means HUD or other person or entity that is responsible for making eligibility and related determinations and scheduled income reviews under any of the programs referred to in § 200.1003.

Scheduled income reexamination has the following meaning for the programs referred to in § 200.1003:

(a) *Part 203, subpart C, Assignment of Mortgages to HUD:* The review of the monthly payment due from the mortgagor under the assistance agreement, as provided by § 203.648(c).

(b) *Parts 215, 221(BMIR), 235, and 236:* The regularly scheduled reexamination of participant income.

(c) *Part 290:* Income certification as provided by § 290.17(e).

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1010 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: assistance applicant.* Each assistance applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who is at least six years of age; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(2) If the applicant or any member of the applicant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(b) *Disclosure: individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage documents; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s); or

(2) If any individual referred to in paragraph (b)(1)(i) of this section has not been assigned an SSN, a certifica-

tion executed by the individual involved that meets the requirements of paragraph (j) of this section.

(c) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure: participants*—(1) *Initial disclosure by those who were participants before November 6, 1989.* Each participant whose initial determination of eligibility under the program involved was begun before November 6, 1989, must submit the following information to the processing entity at the next scheduled income reexamination:

(i)(A) The complete and accurate SSN(s) assigned to the participant and to each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) *Subsequent disclosure by participants who have made an initial disclosure under this section.* Once a participant has disclosed and verified SSN(s), or submitted a certification(s) that no SSN(s) has been assigned, as provided by paragraph (a) (as an applicant) or paragraph (d)(1) (as a preexisting participant) of this section, the following rules apply:

(i) If the participant's household adds a new member(s) who is at least six years of age, the participant must submit to the processing entity, at the next interim or scheduled income re examination that includes the ne member(s):

(A) The complete and accura SSN(s) assigned to each new membe and the documentation referred to i paragraph (f)(1) of this section t verify the SSN(s) for each ne member; or

(B) If the new member(s) has no been assigned an SSN, a certificatio executed by the individual(s) involve that meets the requirements of para graph (j) of this section.

(ii) If the participant or any membe of the participant's household who i at least six years of age obtains a pre viously undisclosed SSN, or has bee assigned a new SSN (including an member who is six years of age o older and has been assigned an SSN as required by section 6109(e) of th Internal Revenue Code of 1986), th participant must submit to the proc essing entity at the next schedule income reexamination:

(A) The complete and accurat SSN(s) assigned to the participant o household member(s) involved; and

(B) The documentation referred to in paragraph (f)(1) of this section t verify the SSN(s) of each such individual.

(iii) HUD may specify in administrative instructions additional circumstances in which participants must disclose and verify SSNs, as well as the nature of the disclosure and the verification required, and the time and manner for making the disclosure and verification.

(e) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN(s).

(f) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) of this section is a valid SSN card issued by the Social Se-

curity Administration of the Department of Health and Human Services, or such other evidence of the SSN (including one or more alternate documents or such other substantiation of the SSN) as HUD may prescribe in administrative instructions. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer Identification Numbers.* The documentation necessary to verify the EIN(s) of an entity applicant that is required to disclose its EIN(s) under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN(s) to the entity applicant, or such other evidence of the EIN(s) (including such substantiation) as HUD may prescribe in administrative instructions.

(g) *Special documentation rules for assistance applicants and participants*—(1) *Certification of inability to meet documentation requirements.* If an individual who is required to disclose his or her SSN(s) under paragraph (a) (assistance applicants) or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant (as appropriate) must submit to the processing entity the individual's SSN(s) and a certification executed by the individual that the SSN(s) submitted has been assigned to the individual, but that acceptable documentation to verify the SSN(s) cannot be provided.

(2) *Acceptance of certification by processing entity.* Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of this section, and continue to process the applicant's or participant's eligibility to participate in the program involved.

(3) *Effect on applicants.* If the processing entity determines that the assistance applicant is otherwise eligible to particpate in the program, the applicant may not become a participant in the program, unless it submits to the the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section. During such period, the applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including (as appropriate) its place on any waiting list maintained for the program.

(4) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section.

(5) *Time for submitting documentation.* The time period referred to in paragraphs (g) (4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g)(1) of this section is executed, except that the processing entity may, in its discretion and in such circumstances as it may permit, extend this period for up to an additional 60 days, if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60-day period.

(h) *Rejection of documentation or certification.* This processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraph (a)(2), (b)(2), (d), or (g)(1) of this section, only for such reasons (including the timeliness of the submission) as HUD may prescribe in administrative instructions.

(i) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR chapter III (see particularly part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(j) *Form and manner of certifications.* The certifications referred to in paragraphs (a)(2), (b)(2), (d), and

(g)(1) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

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§ 200.1015 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or of an individual owner applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1010.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved, if:

(1) The applicant does not meet the applicable EIN disclosure and verification requirements specified in § 200.1010; or

(2) Any of the officials of the entity applicant referred to in § 200.1010(c) does not meet the applicable SSN disclosure, and documentation and verification requirements, specified in § 200.1010.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance or the tenancy (or both) of a participant in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1010.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1003 for further information on the use of SSNs and EINs in determining the eligibility of applicants, and the continued eligibility of participants under those programs.

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§ 200.1020 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived therefrom, must be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(Approved by the Office of Management and Budget under control number 2502-0059)

§ 200.1025 Implementation.

(a) *Applicants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1003, apply to all applicant eligibility determinations initiated on or after November 6, 1989.

(b) *Participants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs for participants in the regulations governing the programs referred to in § 200.1003, apply to each scheduled reexamination (and in the circumstances specified in § 200.1010(d)(2)(i), each interim reexamination) of the income of a participant initiated by the processing entity on or after November 6, 1989.

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Subpart U—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants in Unassisted Mortgage and Loan Insurance and Coinsurance Programs

SOURCE: 54 FR 39690, Sept. 27, 1989, unless otherwise noted.

§ 200.1101 Summary and purpose.

(a) *Summary.* This subpart implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the unassisted loan and mortgage insurance and coinsurance programs administered by the Department of Housing and Urban Development under subchapter B of this chapter. The programs covered by this subpart include the Department's unassisted home mortgage and multifamily mortgage insuring and coinsuring authorities under the National Housing Act; the property improvement and manufactured home loan programs under title I of the Act; and mortgage insurance for nursing homes and related facilities, hospitals, group practice facilities, and land development under sections 232 and 242, and titles XI and X, respectively, of the Act.

(2) This subpart requires corporate and other entity applicants that seek HUD-insured or -coinsured financing under any of the programs covered by this subpart to disclose and verify their Employer Identification Numbers. Individual applicants that seek HUD-insured or -coinsured financing under any of the programs covered by this subpart, as well as certain officials of prospective corporate and other entity owners, must disclose and verify their Social Security Numbers. The failure of any person or entity to meet these disclosure and verification requirements constitutes grounds for denial of eligibility for HUD mortgage or loan insurance or coinsurance under the program involved.

(3) Section 165 is implemented for the assisted mortgage and loan insurance and related programs administered by the Department under subchapter B of this chapter, at part 200, subpart T. The provision is implemented for the section 8 Housing Assistance Payments programs administered by the Department under 24 CFR chapter VIII, and for the Public and Indian Housing programs administered by the Department under 24 CFR chapter IX, at 24 CFR part 750; and for the section 312 Rehabilitation Loan program, at 24 CFR part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use Social Security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the covered programs. Specific examples of how the Department may use Social Security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for the previous or current participation of a person or entity in other programs.

(4) Identifying persons or entities in the records of other Federal agencies for the purpose of obtaining information on their eligibility for, or level of benefits in, the Department's programs.

(5) Identifying persons or entities for the purpose of requesting information about them from other government or private sources during audit or investigation.

(6) Validating the identity of a person or entity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided is appropriate.

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§ 200.1103 Applicability.

This subpart applies to all mortgage and loan insurance and coinsurance programs contained in subchapter B of this chapter, except the mortgage insurance and related programs referred to in § 200.1003.

§ 200.1105 Definitions.

As used in this subpart:

Assume an existing mortgage or loan means any assumption of a mortgage or loan that is insured or coinsured under any of the programs referred to in § 200.1103, irrespective of whether the assumption involves the release by the mortgagee of a previous mortgagor from personal liability on the mortgage note and the assumption of this liability, and the agreement to pay the mortgage debt, by the mortgagor.

Applicant includes an individual applicant and an entity applicant, but does not include:

(a) A public entity (such as a PHA or a State Housing Financing Agency), or an Indian Tribe.

(b) A mortgagee or lender.

(c) A person whose only involvement with an application for mortgage or loan insurance or coinsurance, or an assumption of an existing mortgage or loan, is in his or her official capacity with a public entity or an Indian Tribe, or an official of a mortgagee or lender.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

Entity applicant means a partnership, corporation, or other association or entity, other than an individual applicant, that seeks to participate as a private owner (including where the entity seeks to assume an existing mortgage) under any of the programs referred to in § 200.1103.

HUD or *Department* means the United States Department of Housing and Urban Development.

Individual applicant means an individual(s) who:

(a)(1) Applies for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103; or

(2) Seeks to assume an existing mortgage or loan; and

(b) Intends to hold the mortgaged property in his or her individual right.

PHA means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage or assist in the development or operation of housing for lower income families. The term includes Indian Housing Authorities.

Processing entity means the person or entity that is responsible for making eligibility and related determinations under any of the programs referred to in § 200.1103. The processing entity is specified in the regulations governing the covered program, and may include (but is not limited to): HUD, an FHA-approved mortgagee or lender under 24 CFR part 202 or 24 CFR 203.1 through 203.7, a mortgagee under the Direct Endorsement program (§ 200.163), or a lender under a coinsurance authority (part 204, 250, 251, 252 or 255).

Social Security Number (SSN) means the number that is assigned to an individual by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the individual's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1110 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: individual applicants.* Each individual applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(ii) The documentation referred to in paragraph (d)(1) of this section to verify each such SSN; or

(2) If any individual referred to in paragraph (a)(1)(i) of this section has not been assigned an SSN, a certifica-

tion executed by the individual(s) involved that meets the requirements of paragraph (g) of this section.

(b) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (d)(1) of this section to verify each SSN.

(c) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (d)(2) of this section to verify the EIN(s).

(d) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN(s) under paragraphs (a) and (b) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN (including one or more alternate documents or such other substantiation of the SSN) as HUD may prescribe in administrative instructions. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer Identification Numbers.* The documentation necessary to verify the EIN(s) of an entity applicant that is required to disclose its EIN(s) under paragraph (c) of this section is the official, written communication from the IRS assigning the EIN(s) to the entity applicant, or such other evidence of the EIN(s) (including such substantiation) as HUD may prescribe in administrative instructions.

(e) *Rejection of documentation or certifications.* The processing entity may reject documentation referred to in paragraph (d) of this section, or a certification provided under paragraph (a)(2) of this section, only for such reasons (including the timeliness of the submission) as HUD may prescribe in administrative instructions.

(f) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR chapter III (see particularly part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(g) *Form and manner of certifications.* The certification referred to in paragraph (a)(2) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

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§ 200.1015 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an individual applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1110.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved, if:

(1) The applicant does not meet the applicable EIN disclosure and verification requirements specified in § 200.1110, or

(2) Any of the officials of an entity applicant referred to in § 200.1110(b) does not meet the applicable SSN disclosure, and documentation and verification requirements, specified in § 200.1110.

(c) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1103 for further information on the use of SSNs and EINs in determining the eligibility of applicants under those programs.

(Approved by the Office of Management and Budget under control number 2502-0059)

§ 200.1120 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived therefrom, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

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§ 200.1125 Implementation.

The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1103, apply to all eligibility determinations for individual and entity applicants initiated on or after November 6, 1989.

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APPENDIX A TO PART 200—STANDARDS INCORPORATED BY REFERENCE IN THE MINIMUM PROPERTY STANDARDS FOR HOUSING (HUD 4910.1)

The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS). The MPS are in turn incorporated by reference in 24 CFR Part 200, Subpart S. The MPS may be purchased from the U.S. Government Printing Office, Washington, DC 20402. It is also available for public inspection at the HUD Program Information Center, Room 1104, 451 Seventh Street, SW, Washington, DC, at each HUD Regional, Area, and Service Office, and at the Office of the Federal Register, 1100 L Street, NW., Washington, DC. The individual standards referenced in the MPS are available at the addresses contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Room 3232, 451 Seventh Street, SW., Washington, DC and the Office of the Federal Register.

Aluminum Association, 818 Connecticut Avenue, NW., Washington, DC 20006.
AA-ASM 35-80 Specifications for Aluminum Sheet Metal Work in Building Construction

American Concrete Institute, P.O. Box 19150, Redford Station, Detroit, MI 48219.
ACI 211.1-81 Standard Practice for Selecting Proportions for Normal, Heavyweight, and Mass Concrete
ACI 211.2-81 Standard Practice for Selecting Proportions for Structural Lightweight Concrete
ACI 213 R-79 Guide for Structural Lightweight Concrete
ACI 214-77 Recommended Practice for Evaluation of Compressive Test Results of Field Concrete
ACI 301-72 (R81) Specifications for Structural Concrete for Buildings
ACI 302.1R-80 Guide for Concrete Floor and Slab Construction
ACI 304-73 (R78) Recommended Practice for Measuring, Mixing, Transporting and Placing Concrete
ACI 305 R-77 Hot Weather Concreting
ACI 306 R-78 Cold Weather Concreting
ACI 311.4R-80 Guide for Concrete Inspection
ACI 315 R-80 Guide for Detailing of Concrete Reinforcement
ACI 318-77 Building Code Requirements for Reinforced Concrete, with 1980 Supplement
ACI 322-72 Structural Plain Concrete
ACI 347-78 Recommended Practice for Concrete Formwork

ACI 504 R-77 Guide to Joint Sealants for Domestic Structures
ACI 506-66 (R78) Recommended Practice for Shotcreting
ACI 515 R-79 Recommended Practice for the Application of Paint to Concrete Surfaces
ACI 533.1R-69 Quality Standards and Tests for Precast Concrete Wall Panels
ACI 533.2R-69 Selection and Use of Materials for Precast Concrete Wall Panels
ACI 533.3R-70 Fabrication, Handling and Erection of Precast Concrete Wall Panels

American National Standards Institute, 1430 Broadway, New York, New York 10018.

ANSI A108.1-76 Installation of Glazed Wall Tile, Ceramic Mosaic Tile, Quarry Tile and Paver Tile with Portland Cement Mortar
ANSI/AHA A135.4-82 Basic Hardboard
ANSI A137.1-80 Ceramic Tile
ANSI A156.2-76 Locks and Lock Trim
ANSI A161.1-80 Construction and Peformance Standards for Kitchen and Vanity Cabinets
ANSI Z34.1-82 American National Standard for Certification—Third—Party Certification Program

American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

ASTM C 12-81 Installing Vitrified Clay Pipe Lines
ASTM C 208-72 (1982) Insulating Board (Cellulosic Fiber), Structural and Decorative
ASTM C 209-72 Insulating Board (Cellulosic Fiber), Structural and Decorative
ASTM C 220-77 Flat Asbestos-Cement Sheets
ASTM C 221-81 Corrugated Asbestos-Cement Sheets
ASTM C 223-78 Asbestos-Cement Siding
ASTM C 509-79 Cellular Elastomeric Preformed Gasket and Sealing Material
ASTM C 516-80 Vermiculite Loose Fill Thermal Insulation.
ASTM C 549-81 Perlite Loose Fill Insulation
ASTM C 726-81 Mineral Fiber and Mineral Fiber Rigid Cellular Polyurethane Composite Roof Insulation Board
ASTM C 754-82 Installation of Steel Framing Members to Receive, Screw Attached Gypsum Wallboard, Backing Board or Water Resistant Backing Board
ASTM C 834-76 (1981) Latex Sealing Compounds
ASTM C 841-81 Installation of Interior Lathing and Furring
ASTM C 842-79 Application of Interior Gypsum Plaster
ASTM C 843-76 Application of Gypsum Veneer Plaster
ASTM C 844-79 Application of Gypsum Base to Receive Gypsum Veneer Plaster
ASTM C 846-76 Application of Structural Insulating Board (Fiberboard) Sheathing
ASTM C 926-81 Application of Portland Cement Based Plaster
ASTM D 1037-78 Wood-Base Fiber and Particle Panel Materials
ASTM D 1557-78 Moisture-Unit Weight Relations of Soils, and Soil-Aggregate Mixtures Using 10-lb (4.5 kg) Rammer and 18-in. (457-mm) Drop
ASTM D 2316-75 (1980) Installing Bituminized Fiber Drain and Sewer Pipe
ASTM D 2321-74 (1980) Underground Installation of Flexible Thermoplastic Sewer Pipe
ASTM D 3656-78 Insect Screening and Louver Cloth Woven From Vinyl Coated Glass Fiber Yarn
ASTM D 3679-81a Rigid Polyvinyl Chloride (PVC) Siding
ASTM E 72-80 Standard Methods of Conducting Strength Tests of Panels for Building Construction
ASTM E 283-73 Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors
ASTM E 330-79 Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 331-70 Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 380-82 Metric Practice

American Society of Heating, Refrigerating and Air Conditioning Engineers, 345 East 47th Street, New York, New York 10017.

ASHRAE Handbook of Fundamentals—1981
ASHRAE Handbook of Applications—1978
ASHRAE Handbook of Equipment—1979
ASHRAE Handbook of Systems—1980
ASHRAE GRP 158-1979 Cooling and Heating Load Calculations Manual

American Welding Society, 550 NW Le Jeune Road, Miami, Florida 33126.

ANSI/AWS D1.1-82 Structural Welding Code
ANSI/AWS D1.4-79 Structural Welding Code—Reinforcing Steel

Architectural Aluminum Manufacturers Association, 35 East Wacker Drive, Chicago, Illinois 60601.

AAMA 302.9-77 Aluminum Prime Windows (ANSI A134.1)
AAMA SG-1-76 Specifications for Dense Rubber-Like Compression Gasket Materials
AAMA 402.9-77 Aluminum Sliding Glass Doors and Frames (ANSI A134.2)

AAMA 804.1-76 Ductile Back-Bedding Glazing Tape for Use with Architectural Aluminum
AAMA 807.1-76 Cured Rubber Back-Bedding Glazing Tapes
AAMA 809.2-76 Non-Drying Sealants for Use with Architectural Aluminum
AAMA 1002.10-83 Aluminum Insulating Storm Products
AAMA 1102.7-77 Aluminum Storm Doors and Frames
AAMA 1402.3-82 Aluminum Siding
AAMA 1403.3-81 Installation Specifications for Residential Aluminum Siding
AAMA 1502.6-77 Voluntary Standards and Tests of Residential Insulating Windows and Sliding Glass Doors
AAMA 1502.7-81 Voluntary Test Method for Condensation Resistance of Windows, Doors and Glazed Wall Sections
AAMA 1503.1-80 Thermal Transmittance of Windows, Doors, and Glazed Wall Sections
AAMA 1504-83 Thermal Performance of Residential Windows and Sliding Glass Doors

The Asphalt Institute, Asphalt Institute Building, College Park, Maryland 20740.
MS-1-81 Thickness Design-Full-Depth Asphalt Pavement Structures for Highways and Stree

Asphalt Roofing Manufacturers Association, 1800 Massachusetts Avenue, NW., Washington, DC 20036.
Residential Asphalt Roofing Manual—1980

Carpet and Rug Institute, 301 Holiday Avenue, Box 2048, Dalton, Georgia 30720.
Specifiers Guide for Contract Carpet Installations, 1980

Council of American Building Officials, Suite 201, 5205 Leesburg Pike, Falls Church, Virginia 22041
Model Energy Code—1983 Edition

Department of Agriculture, Publications Division, Office of Government Affairs, 14th and Independence Avenue, SW., Washington, DC 20050.
Agriculture Handbook No. 72—Wood Handbook—1974
Home and Garden Bulletin No. 64—Subterranean Termites—1979
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How to Prevent and Control It—1977

Department of Commerce, National Bureau of Standards, Washington, DC 20234.
NRS SP 330 The International System of Units—1977

Department of Defense, Naval Publication and Forms Center, 5801 Taber Road, Philadelphia, PA 19120.

Federal Specifications:
L-S-125B Screening, Insect, Non-metallic
L-F-001641 (GSA/FSS) Floor Covering, Translucent or Transparent Vinyl Surface with Backing and Amendment 1, 1971
L-F-475A Backed Vinyl Plastic Sheet or Tile
L-F-00450A (GSA/FSS) Flooring, Vinyl Plastic
DD-G-451D Glass, Float or Plate, Sheet, Figured (Flat, for Glazing, Mirrors and Other Uses)
HH-I-515D Insulation Thermal (Loose Fill for Pneumatic or Poured Application) Cellulosic or Wood Fiber
HH-I-521F Insulation Blankets, Thermal (Mineral Fiber, for Ambient Temperatures)
HH-I-524C Insulation Board, Thermal (Polystyrene)
HH-I-525A Insulation Board, Thermal (Cork)
HH-I-530B Insulation Board, Thermal, Unfaced, Polyurethane or Polyisocyanurate
HH-I-551E Insulation Block and Boards, Thermal (Cellular Glass)
HH-I-558B Insulation Blocks, Boards, Blankets, Felts Sleeving (Pipe and Tube Covering), and Pipe Fitting Covering, Thermal (Mineral Fiber, Insulation Type)
HH-I-1030B Insulation, Thermal (Mineral Fiber, for Pneumatic or Poured Application)
HH-I-1972/Gen; 1, 2, 3, 4, 5, & 6 Insulation Board, Thermal, Faced, Polyurethane and Polyisocyanurate
SS-S-346C Siding (Shingles, Clapboards, and Sheets) Asbestos-Cement
SS-T-312B Tile, Floor: Asphalt, Rubber, Vinyl-Asbestos
TT-C-598B Caulking Compound, Oil and Resin Base Type (for Masonry and Other Structures)
TT-S-227B Sealer Compound; Rubber-Base Two Component (for Caulking, Sealing) and Glazing in Building Construction
TT-S-230A Sealing Compound; Synthetic Rubber Base, Single Component, Chemically Curing for Caulking, Sealing, and Glazing in Building Construction
TT-S-001543A (COM/NBS) Sealing Compound: Silicone Rubber Base (for Caulking, Sealing, and Glazing in Buildings and Other Structures)
TT-S-001657A Ceiling Compound: Single Component Butyl Rubber Based Solvent Release Type for Buildings and Other Types of Construction
LLL-I-535B Insulation Board, Thermal, Cellulosic Fiber
LLL-F-1238A Floor, Covering Linoleum

Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410
Handbooks:

4940.1-10/72 Minimum Property Standards for Semi-private Swimming Pools and Wading Pools
4940.2-8/73 Minimum Design Standards for Community Water Supply
4940.3-11/72 Minimum Design Standards for Community Sewage Systems
4950.1-8/79 Technical Suitability of Products Program, Technical and Processing Procedures

Use of Materials Bulletins:
17e Concrete Roofing Tile—7/17/74
25d Power Driven, Mechanically Driven and Manually Driven Fasteners—9/5/73
38h Grademarking of Lumber—7/31/79
44c HUD/FHA Standard for Carpet and Carpet Certification Program—2/22/78 (Plus Addendum 1 & 2)
48 Labels of Independent Programs for Certifying Pressure-Treated Lumber and Plywood (PLUS 5 SUPPLEMENTS)—11/15/67
52a Quality Certification and Labelling for Wood Flush Doors—10/7/75
58a Acrylic Plastic Sheets for Glazing—9/2/75
60 Field Glued Plywood & Wood Frame Structural Floor Systems—12/9/70
62a Factory-Applied Laminated Roofing Systems Based on Chlorosulfonated Polyethylene (CSPE)—11/16/72
64b Textured Plywood Panel Siding—8/13/75
65 Controlled Density Cellular Concrete Floor Fill—10/11/73
66a Plywood Combination Subfloor/Underlayment Floor Panels—12/6/78
67 Polycarbonate Plastic Sheets for Glazing—9/3/75
69 Self Adhering Vinyl Asbestos Floor Tile—1/6/77
70a Particleboard Interior Stair Treads and Certification Program—5/19/82
71 Polystyrene Foam Insulation Sheathing Board—1/10/77
72 HUD Standard for Carpet Cushion—2/6/80
76 Chlorinated Poly (Vinyl Chloride) CPVC and Polybutylene (PB) Hot and Cold Water Distribution—4/25/78
77a Cast Iron Sanitary Drainage System with Hubless Pipe and Fittings—3/28/80
78 Polyethylene (PE), Acrylonitrile-Butadiene-Styrene (ABS), Poly Vinyl Chloride (PVC) and Polybutylene (PB) Plastic Piping for Domestic Cold Water Service—4/25/78
79a Acrylonitrile-Butadiene-Styrene (ABS) and Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste and Vent Pipe and Fittings—3/7/82
80 Spray Applied Cellulosic Thermal Insulation—10/31/79

Commercial Standards:
CS 138-55 Insect Wire Screening
CS 242-62 1¾" Thick Steel Doors and Frames

Federal Specifications:
DD-G-1403B Glass, Plate (Float), Sheet, Figured, and Spandrel (Heat Strengthened and Fully Tempered)
HH-I-526C Insulation Board, Thermal (Mineral Fiber)
HH-I-529B Insulation Board, Thermal (Mineral Aggregate)
HH-I-574B Insulation, Thermal (Perlite)
HH-I-585C Insulation, Thermal (Vermiculite)
HH-I-1252B Insulation, Thermal Reflective, (Aluminum Foil)

Product Standards:
PS 1-83 Plywood
PS 4-66 Standard Stock Light Duty 1⅜ and 1¾-inch Flush-Type Interior Steel Doors and Frames, etc.
PS 27-70 Mosaic-Parquet Hardwood Slat Flooring
PS 57-73 Cellulosic Fiber Insulation Board
PS 60-73 Hardboard Siding

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460
EPA 430/9-74-007 Manual of Individual Water Supply Systems (Reprinted 1975) (PB 258402)

Fir and Hemlock Door Association, Yeon Building, Portland, Oregon 97204
FHDA 7-79 Fir and Hemlock Door Association Standard

Flat Glass Marketing Association, White Lakes Professional Building, 3310 Harrison Street, Topeka, KS 66611
Glazing Manual—1980
Glazing Sealing Systems Manual—1970

Hardwood Plywood Manufacturers Association, 1825 Michael Faraday Drive, Reston, Virginia 22090
ANSI/HPMA LHF-1982 Laminated Hardwood Flooring

National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20418
Criteria for Selection and Design of Residential Slabs-on-Ground, Report No. 33, Publication 1571 (1968), Building Research Advisory Board

National Association of Home Builders, Research Foundation, 627 Southlawn Lane, Rockville, Maryland 20850
Insulation Manual for Homes and Apartments—1979

National Fire Protection Association, Batterymarch Park, Quincy, MA 02269
NFPA 54-80 National Fuel Gas Code (ANSI Z223.1—1980)
NFPA 58-79 Standard for the Storage and Handling of Liquefied Petroleum Gases

National Oak Flooring Manufacturers Association, 804 Sterick Building, Memphis, Tennessee 38103

Official Grading Rules for Oak, Beech, Birch, Hard Maple and Pecan (OFGR/Vol. 1, No. 1/March 1977)
Hardwood Flooring Finishing/Refinishing Manual, 1983
Hardwood Flooring Installation Manual, 1983

National Roofing Contractors Association, 8600 Bryn Mawr Avenue, Chicago, Illinois 60631
NRCA Roofing and Waterproofing Manual, 1981

National Sash and Door Jobbers Association, 20 North Wacker Drive, Chicago, Illinois 60606
NSDJA 1-79 Interior Pre-Hung Wood Door Units

National Terrazzo and Mosaic Association, 3166 Des Plaines Avenue, Suite 15, Des Plaines, Il 60018
NTMA Specifications, Details and Technical Data, 1981

National Woodwork Manufacturers Association, 400 West Madison Street, Chicago, Illinois 60606
IS 1-80 Industry Standard for Wood Flush Doors
IS 2-80 Industry Standard for Wood Window Units
IS 3-70 Industry Standard for Wood Sliding Patio Doors
IS 5-73 Industry Standard for Ponderosa Pine Doors

Post-tensioning Institute, 382 Springfield Avenue, Summit, New Jersey 7C901-2782
Design and Construction of Post-tensioned Slabs-on-Ground—1980

Prestressed Concrete Institute, 20 North Wacker Drive, Chicago, Illinois 60606
PCI MNL 116 Manual for Quality Control for Plants and Production of Precast Prestressed Concrete Products—1977
PCI MNL 117 Manual of Quality Control for Plants and Production of Architectural Precast Concrete Products—1977
PCI MNL 121 Manual for Structural Design of Architectural Precast Concrete—1977

Resilient Floor Covering Institute, 966 Hungerford Drive, Suite 12-B, Rockville, Maryland 20850
Recommended Installation Specifications for Vinyl Asbestos, Solid Vinyl and Asphalt Tile Floorings, 1978

Safety Glazing Certification Council, 1640 West 32nd Avenue, Hialeah, Florida 33012
Certified Products Directory

Southern California Association of Cabinet Manufacturers, 1933 South Broadway, L. 39, Los Angeles, California 90007
Certified Construction Standards and Specifications, Guide for Uniform Cabinet Specifications—1973

Tile Council of America, Inc., Box 326, Princeton, New Jersey 08540
Handbook for Ceramic Tile Installation-1984

Underwriters Laboratories, 333 Pfingste Road, Northbrook, Illinois 60062
Electrical Appliance and Utilizatio Equipment Directory, 1982

Water Quality Association, 477 East Bute field Road, Lombard, Illinois 60148
WQA S-100 Water Softeners—1975
WQA S-200 Water Filters—1973

Wood Moulding and Millwork Producers, P.O. Box 25278, Portland, OR 97225
WM 3-79 Exterior Wood Door Frames

[49 FR 18697, May 1, 1984, as amended at 51 FR 28699, Aug. 11, 1986]

Appendix B to Part 200—Standards Incorporated by Reference in the Minimum Property Standards for One and Two Family Dwellings

The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS). The MPS are in turn incorporated by reference in 24 CFR Part 200, Subpart S. The MPS may be purchased from the U.S. Government Printing Office, Washington, DC 20402. It is also available for public inspection at the HUD Program Information Center, Room 1104, 451 Seventh Street, SW., Washington, DC, at each HUD Regional, Area, and Service Office, and at the Office of the Federal Register, 1100 L Street, NW., Washington, DC. The individual standards referenced in the MPS are available at the addresses contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Room 9156, 451 Seventh Street, SW., Washington, DC and the Office of the Federal Register.

Air Conditioning Contractors of America, 1228 17th Street, NW., Washington, DC 20036.
Load Calculation for Residential Winter and Summer Air Conditioning, Manual J 1981.

American National Standards Institute, 1430 Broadway, New York, New York 10018.
ANSI A58.1-82 Minimum Design Loads in Building and other Structures.

American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
ASTM C 62-83 Standard Specification for Building Brick (Solid masonry units made from clay or shale).

American Society of Heating, Refrigerating and Air Conditioning Engineers, 1791 Tullie Circle, NE., Atlanta, Georgia 30329.

ASHRAE Handbood of Fundamentals—1985.
ASHRAE Energy Conservation in New Building Design 90A-80.
Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041.
CABO One and Two Family Dwelling Code, 1983 edition, with the 1984 and 1985 Amendments, excluding chapter 1—Administrative; Part VI—Electrical; and Part VII—Energy Conservation, but including appendices A and B of the Code.
The Hydronics Institute, 35 Russo Place, Berkeley Heights, New Jersey 07922.
Heat Loss Calculation guide, H-21-1984.
The National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.
Electrical Code for One and Two Family Dwellings, NFPA 70A, 1984 Edition, including appendices.
Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.
Handbooks:
4940.2-8/73 Minimum Design Standards for Community Water Supply.
4950.1-8/79 Technical Suitability of Products Program, Technical and Processing Procedures.
Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
EPA 430/9-74/007 Manual of Individual Water Supply Systems (Reprinted 1975) (PB 258402).

[50 FR 39600, Sept. 27, 1985; 51 FR 10825, Mar. 31, 1986]

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

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201.31 Insurance charge.
201.32 Insurance coverage reserve account.

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201.52 Acquisition by voluntary conveyance or surrender.
201.53 Disposition of manufactured home loan property.
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201.55 Calculation of insurance claim payment.

AUTHORITY: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 50 FR 43523, Oct. 25, 1985, unless otherwised noted.

Subpart A—General

§ 201.1 Purpose.

These regulations implement the provisions of section 2 of Title I of the National Housing Act (12 U.S.C. 1703). They contain the requirements under which an approved financial institution may obtain insurance on loans made for the alteration, repair or improvement of property, for the purchase of a manufactured home and/or the lot on which to place such home, for the purchase and installation of fire safety equipment in existing health care facilities, and for the preservation of historic structures. The insurance granted by the Secretary of Housing and Urban Development shall be available only for loans involving property located within a State, as that term is defined in § 201.2. The insurance can cover up to 10 percent of the amount of all insured Title I loans in the financial institution's portfolio, as reflected in the total amount of insurance coverage contained at any time in an insurance coverage reserve account established by the Secretary, less amounts for annual adjustments and for insurance claims paid. As limited by the amount of insurance coverage in such a reserve account, the in-

surance can cover up to 90 percent of the loss of any individual loan.

§ 201.2 Definitions.

As used in the regulations in this part the term:

(a) "Act" means the National Housing Act, 12 U.S.C. 1703.

(b) "Actuarial method" means the method of allocating payments made on a loan between the outstanding balance of the principal amount borrowed and the interest due on a loan obligation, under which a payment is applied first to the accrued interest, and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the obligation.

(c) "Borrower" means one who applies for and receives a loan from a lender under these regulations.

(d) "Combination loan" means a loan made for the purchase or refinancing in a single transaction of a manufactured home and a manufactured home lot, and may also include a garage, patio, carport, or other comparable appurtenance.

(e) "Dealer" means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, "dealer" means one who engages in the business of manufactured home retail sales.

(f) "Dealer loan" means a loan where a dealer, having a direct or indirect financial interest in the transaction between the borrower and the lender, assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender. The lender may disburse the loan proceeds solely to the dealer or the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

(g) "Default" means a failure by the borrower to make any payment due under the note, or a failure to perform any other obligation under the note (or the security instrument therewith), when such failure continues for a period of 30 days. For the purpose of these regulations, the "date of default" shall be considered as 30 days after:

(1) The first uncorrected failure to perform any obligation under the note; or

(2) The first failure to make an installment payment on the note which is not covered by subsequent payments, when applied to the overdue installments in the order in which they became due.

(h) "Direct loan" means a loan for which a borrower makes application directly to a lender without any assistance from a dealer. The credit application, signed by the borrower, may be filled out by the borrower or by a person acting at the direction of the borrower who is not a dealer. The lender may disburse the loan proceeds solely to the borrower or jointly to the borrower and other parties to the transaction. If a dealer takes legal action required by State law in order for the lender to obtain a valid and enforceable lien against the property, such action by the dealer will not convert an otherwise direct loan to a dealer loan.

(i) "Existing structure" means a dwelling, including a manufactured home classified as realty, which was completed and occupied at least 90 days prior to an application for a Title I loan, or a nonresidential structure which was a completed building with a distinctive functional use prior to an application for a Title I loan. However, these occupancy and completion requirements shall not apply to:

(1) Loans having a principal obligation of $1000 or less; or

(2) Residential structures which have been damaged by conditions determined by the President to warrant relief under the provisions of Title 42, Chapter 68, of the United States Code.

(j) "Fire safety equipment loan" means a loan made to finance the purchase and installation of any device or construction feature which is recognized in the latest edition of the Department of Housing and Urban Development's Minimum Property Standards for Care Type Housing (HUD Handbook 4920.1) or the Fire Safety Code of the National Fire Protection Association, and which is designed to reduce the risk of death, personal injury, or property damage re-

sulting from a fire in a health care facility.

(k) "Furniture" means movable articles of personal property relating to a home or dwelling, such as beds, chairs, sofas, lamps, tables, rugs, etc.; however, furniture does not include:

(1) Items built into the home or dwelling such as wall-to-wall carpeting or heating or cooling equipment; or

(2) Large appliances such as refrigerators, ovens, ranges, dishwashers, clothes washers or clothes dryers.

(l) "Health care facility" means a proprietary facility or facility of a private nonprofit corporation or association, licensed or regulated by the State or by the municipality or other political subdivision in which the facility is located, and operated as one or more of the following:

(1) A nursing home for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services performed under the general direction of persons licensed by the law of the State where the facility is located to provide such care or services;

(2) An intermediate health care facility for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care, but not continuous medical care or nursing services;

(3) An extended health care facility for inpatient care for convalescents or chronic disease patients who require skilled nursing care and related medical services; or

(4) Other comparable health care facility.

(m) "Historic preservation loan" means a loan to finance the preservation (restoration or rehabilitation) of an historic residential structure which is listed on the National Register of Historic Places or which is certified by the Secretary of the Interior as conforming with National Register criteria.

(n) "Lender" means a financial institution which is approved for credit insurance, holds a valid Title I contract of insurance that has not been terminated by the Secretary, and is approved by the Secretary under 24 CFR Part 202 and this part both to originate and purchase, and to hold, service and sell Title I loans insured under this part. If a Title I contract of insurance with such an institution has been terminated, the institution may no longer originate or purchase Title I insured loans under the contract, although with the Secretary's approval it may hold, sell or continue to service Title I insured loans held in its portfolio prior to the contract's termination.

(o) "Loan" means a disbursement of proceeds (funds) or an advance of credit to or for the benefit of a borrower who promises to repay the principal amount of such disbursement or advance, plus interest, if any, at a stated annual rate over time, with the borrower's obligation evidenced by the borrower's execution of a note. "Loan" also means a purchase by a lender of a note evidencing such obligation, or a refinancing of an existing obligation with or without an additional disbursement of proceeds or advance of credit.

(p) "Manufacturer's invoice" means a document issued by a manufacturer and provided with a manufactured home to a retail dealer which separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes, itemized options (large appliances, built-in items and equipment), and specific specialty items, plus actual itemized charges for freight (including any rental of wheels and axles) from the factory to the dealer's lot or the homesite and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category. The manufacturer shall certify in the invoice as follows:

The undersigned certifies under applicable criminal and civil penalties for fraud and mis- representation that: (1) the wholesale (base) prices for the manufactured home, itemized options, and specialty items as detailed, the charges for freight and dealer-paid sales taxes, and all other statements in this invoice are true and accurate; (2) all such prices reflect the actual dealer costs at the factory, as quoted in the applicable current manufacturer's wholesale (base) price

list; and (3) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of—and the manufacturer will make no payments to or for the benefit of the dealer and/or home purchaser concerning—trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of the dealer and/or home purchaser at any date.

(q) "Manufactured home" means a transportable structure, comprised of one or more modules, each built on a permanent chassis, with or without a permanent foundation, designed for occupancy as a principal residence by a single family. A new manufactured home shall comply with the minimum property standards prescribed by the Secretary to assure its livability and durability that are published as the Manufactured Home Construction and Safety Standards implementing the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401-5426, at 24 CFR Part 3280. An existing manufactured home that has not been insured under this part must have been constructed in accordance with the standards published at 24 CFR Part 3280 and must meet standards similar to the minimum property standards applicable to existing homes insured under Title II of the Act, as prescribed by the Secretary.

(r) "Manufactured home improvement loan" means a loan made to finance the alteration, repair or improvement of an existing manufactured home which is classified as personalty by the State or locality in which the property is located.

(s) "Manufactured home loan" means a loan for the purchase or refinancing of a manufactured home and/or the lot on which to place such home. Unless otherwise indicated, the term includes manufactured home purchase loans, manufactured home lot loans, and combination loans.

(t) "Manufactured home lot loan" means a loan for the purchase or refinancing of a portion of land acceptable to the Secretary as a manufactured home lot. A manufactured home lot may consist of platted or unplatted land, a lot in a recorded or unrecorded subdivision or in an improved area of such subdivision, or a lot in a planned unit development. A manufactured home lot may also consist of an interest in a manufactured home condominium project (including any interest in the common areas) or a share in a cooperative association which owns and operates a manufactured home park.

(u) "Manufactured home purchase loan" means a loan for the purchase or refinancing of a manufactured home exclusive of any lot or site, and may also include a garage, patio, carport, or other comparable appurtenance.

(v) "Multifamily property improvement loan" means a loan to finance the alteration, repair, improvement or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families, which structure is not owned by a corporation, partnership or trust.

(w) "Nonresidential property improvement loan" means a loan made to finance the construction of a new exclusively nonresidential structure or the alteration, repair or improvement of an existing structure that is nonresidential. Such a structure may be temporarily used for residential purposes while the borrower constructs a new dwelling to replace a dwelling previously occupied by the borrower that was destroyed or damaged by conditions determined by the President to warrant relief under the provisions of Title 42, Chapter 68, of the United States Code, provided that the credit application is filed within one year from the date of such a determination.

(x) "Note" means the written instrument evidencing the borrower's signature to a promise to repay the principal indebtedness and to pay any interest due on a loan, whether the instrument is separate from or included within another document, and unless otherwise specified means also any security instrument with respect to that loan obligation.

(y) "Owner" means a person, including a borrower, who has title in whole or in part to the property which is the subject of a loan transaction.

(z) "Principal residence" means a home where the borrower expects to live at least nine months of the year.

(aa) "Property improvement loan" means a loan made to finance actions or items that substantially protect or improve the basic livability or utility of a property. Unless otherwise indicated, the term includes single family, multifamily and nonresidential property improvement loans; manufactured home improvement loans where the home is classified as personalty; historic preservation loans; and fire safety equipment loans in existing health care facilities.

(bb) "Rehabilitation" means the process of returning an historic residential structure to a state of utility, through repair or alteration, which makes possible an efficient contemporary use. In rehabilitation, those portions of the property important in illustrating historic, architectural and cultural values are preserved or restored.

(cc) "Restoration" means the process of accurately recovering the form and details of an historic residential structure as it appeared at a particular period of time by removing later work and by replacing missing original work.

(dd) "Secretary" means the Secretary of Housing and Urban Development or other HUD official with delegated authority.

(ee) "Security instrument" means a properly recorded chattel mortgage, real estate mortgage or deed of trust, or conditional sales contract.

(ff) "Single family property improvement loan" means a loan to finance alterations, repairs and improvements to or in connection with an existing structure, including an existing one-family manufactured home classified as real property by the State or locality in which the property is located, for use as a single family residence.

(gg) "Solar energy system" means any addition, alteration or improvement to an existing structure for single family or multifamily residential use which is designed to utilize wind or solar energy to reduce the energy requirements of that structure from other energy sources, and which complies with standards prescribed by the Secretary.

(hh) "Special benefits" means benefits other than volume incentives for dealers which a home manufacturer funds from general corporate revenues by charging them against corporate overhead and profit without changing the wholesale (base) price of a manufactured home (or series of homes), as reflected in the manufacturer's published wholesale (base) price list, and which are limited to payments by the manufacturer directly to:

(1) A financial institution to "buy down" or reduce the interest rate, discount points, or other fees or charges related to a lending agreement for a dealer's manufactured home inventory or "floor plan" financing needs; or

(2) One or more advertising media for all or part of the costs of advertising the manufacturer's homes, one or more dealer's services, and related manufactured home materials and products in such media.

(ii) "Specialty items" means services, materials or products related to a manufactured home, or its installation or erection which are sold by a home manufacturer to a dealer and which are specified in the manufacturer's invoice, including but not limited to an extended warranty or service contract, and wheels and axles (if purchased).

(jj) "State" means any State of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(kk) "Volume incentives" means specified dollar benefits to dealers under a published marketing and promotional plan, payable by a home manufacturer in cash or in kind in amounts or levels relating to the volume of sales of manufactured homes to dealers, other than benefits of a nominal value of less than $10 per home, which:

(1) The manufacturer funds from general corporate revenues by including them in the prices quoted in the manufacturer's wholesale (base) price list and charging them against corporate overhead and profit;

(2) Whether or not available on an optional basis do not increase or decrease the wholesale (base) prices for

the sale of a specific home, itemized options, or specialty items, or the charges for freight and dealer-paid sales taxes as detailed in the manufacturer's invoice for a specific sale to a retail dealer;

(3) The manufacturer provides without creating a special product line where the cost of the benefits is the only substantive difference between the special product line and other essentially similar homes;

(4) Whether or not also of benefit to the ultimate purchaser, do not increase or decrease the retail price of the home;

(5) Are available to any dealer in a particular market area doing business with the manufacturer;

(6) The manufacturer provides only for volume sales of manufactured homes to dealers over a specified period of time;

(7) The plan provides in escalating and different amounts or levels related to either the number of homes (or modules) sold or the dollar value of such sales to a dealer, or some combination of such elements, in a specified period of time;

(8) Are structured so that only some of the dealer participants are expected to be paid the maximum benefits under the program, with substantial numbers of participants expected to receive less than the maximum amount or level of benefits; and

(9) Accrue for volume sales to a dealer over a specified period of time which is at least quarterly in length, and are paid not more frequently than quarterly.

(ll) "Wholesale (base) price list" means the price list(s), as periodically amended, which are published and distributed by a home manufacturer to all retail dealers in a given marketing area, quoting the actual wholesale (base) prices at the factory for specific models or series of manufactured homes, itemized options, and specialty items offered for sale to such dealers during a specified period of time. The wholesale (base) prices may include the manufacturer's projected costs of providing volume incentives and special benefits related to sales to dealers during the period. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of a dealer and/or home purchaser at any date. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication so as to be available to HUD and other Federal agencies upon request.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 36263, Aug. 31, 1989]

§ 201.3 Applicability of the regulations.

The regulations in this part may be amended by the Secretary at any time. Such amendment shall not adversely affect the insurance privileges of a lender on any loan which has been made or for which a loan application has been approved before the effective date of the amendment. Unless otherwise provided, these regulations shall be applicable as of their effective date as follows:

(a) *Subpart A,* General Provisions, apply to all loans reported before, on or after such date for insurance registration by HUD.

(b) *Subpart B,* Loan and Note Provisions, and *Subpart C,* Eligibility and Disbursement Requirements, apply to all loans for which loan applications are approved on or after such date.

(c) *Subpart D,* Insurance of Loans, *Subpart E,* Loan Administration, and *Subpart F,* Default Under the Loan Obligation, apply to all loans reported before, on or after such date for insurance registration by HUD.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989]

§ 201.4 Exclusions of time periods.

If a borrower is a "person in military service" as that term is defined in the Soldier's and Sailor's Civil Relief Act of 1940 and is in default on a loan insured under this part, any period of military service after the date of default shall be excluded in computing the maximum time period for filing an insurance claim.

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§ 201.5 Waivers.

The Secretary may waive any provision of this part, subject to statutory limitations, when it is determined that enforcement of the regulations would impose an injustice upon a lender which has substantially complied with the regulations in good faith and refunded or credited any excess charge made, and when such waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender was in full compliance with the regulations.

§ 201.6 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this part, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0059)

[54 FR 39692, Sept. 27, 1989. Correctly designated at 55 FR 420, Jan. 5, 1990]

Subpart B—Loan and Note Provisions

§ 201.10 Loan amounts.

(a) *Property improvement loans.* (1) The total principal obligation for a property improvement loan shall not exceed the actual cost of the project plus any applicable fees and charges authorized at § 201.25(b), up to the following maximum loan amounts:

(i) Single family property improvement loans—$17,500 ($20,000 where financing the installation of a solar energy system).

(ii) Multifamily property improvement loans—$43,750 or an average of $8,750 per dwelling unit ($50,000 and $10,000, respectively, where financing the installation of a solar energy system).

(iii) Nonresidential property improvement loans—$17,500.

(iv) Manufactured home improvement loans—$5,000.

(v) Historic preservation loans—the lesser of $15,000 per dwelling unit in a residential structure or $45,000 per residential structure.

(vi) Fire safety equipment loans—$50,000.

(2) Notwithstanding the maximum loan amounts in paragraph (a)(1) of this section, the prior approval of the Secretary shall be obtained for any property improvement loan which will result in any borrower having a total unpaid principal obligation under such loans which exceeds $17,500 ($20,000 where financing the installation of a solar energy system in an existing structure).

(3) No property improvement loan shall be approved where the total outstanding balance of all Title I property improvement loans on the same property exceeds the maximum loan amount prescribed for that type of loan. If more than one type of property improvement loan is involved, the total outstanding balance of such loans on a particular property shall not exceed the maximum loan amount prescribed for the larger type of loan.

(b) *Manufactured home purchase loans.* (1) The total principal obligation for a loan to purchase a new manufactured home shall not exceed the sum of the following itemized amounts, up to a maximum of $40,500:

(i) 125 percent of the sum of the wholesale (base) prices of the home and any itemized options, and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The wholesale (base) price of any itemized specialty items, as detailed in the manufacturer's invoice;

(iii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iv) Transportation, including the rental of wheels and axles, to the homesite (if not included in freight charges), set-up and anchoring charges, not to exceed $600 per module;

(v) Skirting costs, not to exceed $400;

(vi) The actual cost of the borrower of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary;

(vii) Actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer; and

(viii) Any applicable charges authorized at § 201.25(b).

(2) Except as provided in paragraph (b)(3) of this section, the total principal obligation for a loan to purchase an existing manufactured home shall not exceed the lesser of (i) 90 percent of the total of the appraised value of the home as equipped and furnished as determined by a HUD-approved appraisal) and any itemized amounts allowed under paragraphs (b)(1)(v) through (viii) of this section, if incurred, or (ii) 90 percent of the purchase price of the home, up to a maximum of $40,500.

(3) The total principal obligation for a loan to purchase a repossessed existing manufactured home which was previously financed with an insured loan under this part shall not exceed the greater of (i) 90 percent of the total of the appraised value of the home as equipped and furnished (as determined by a HUD-approved appraisal) and any itemized amounts allowed under paragraphs (b)(1)(v) through (viii) of this section, if incurred, or (ii) 90 percent of the purchase price of the home, up to a maximum of $40,500.

(4) The purchase price of a new manufactured home financed with a manufactured home purchase loan includes the retail costs to the borrower, as itemized in the purchase contract, of all items set forth in paragraph (b)(1) of this section. The purchase price of an existing manufactured home financed with a manufactured home purchase loan includes the retail costs to the borrower, as itemized in the purchase contract, of all items set forth in paragraph (b)(2) or (b)(3) of this section, as applicable.

(c) *Manufactured home lot loans.* The total principal obligation for a loan to purchase and, if necessary, develop a lot suitable for a manufactured home, including on-site water and utility connections, sanitary facilities, site improvements and landscaping, shall not exceed 90 percent of either the appraised value of the developed lot (as determined by a HUD-approved appraisal) or the total of the purchase price and development costs, whichever is less, up to a maximum of $13,500.

(d) *Combination loans.* (1) The total principal obligation for a loan to purchase a new manufactured home and a lot on which to place the home shall not exceed the sum of the following itemized amounts, up to a maximum of $54,000:

(i) 125 percent of the sum of the wholesale (base) prices of the home and any itemized options, and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The wholesale (base) price of any itemized specialty items, as detailed in the manufacturer's invoice;

(iii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iv) Transportation, including the rental of wheels and axles, to the homesite (if not included in the freight charges), set-up and anchoring charges, not to exceed $900 per module;

(v) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer;

(vi) The appraised value of the developed manufactured home lot (as determined by a HUD-approved appraisal, including on-site water and utility connections, sanitary facilities, site improvements and landscaping) or the purchase price, whichever is less;

(vii) The actual cost to the borrower or the appraised value (as determined by a HUD-approved appraisal), whichever is less, of appurtenances to the home such as a permanent foundation, garage, carport or patio; and

(viii) Any applicable charges authorized at § 201.25(b).

(2) Except as provided in paragraph (d)(3) of this section, the total principal obligation for a loan to purchase an existing manufactured home and a lot on which to place the home shall not exceed 95 percent of either (i) the total appraised value (as determined by a HUD-approved appraisal) of the home as equipped and furnished, the lot as improved and any appurtenances, or (ii) their purchase price, whichever is less, plus 95 percent of any applicable charges authorized at

§ 201.25(b), up to a maximum of $54,000.

(3) The total principal obligation for a loan to purchase a foreclosed or repossessed existing manufactured home, lot and appurtenances which were previously financed with an insured loan under this part shall not exceed 95 percent of either (i) the total appraised value (as determined by a HUD-approved appraisal) of the home as equipped and furnished, the lot as improved and any appurtenances, or (ii) their purchase price, whichever is greater, plus 95 percent of any applicable charges authorized at § 201.25(b), up to a maximum of $54,000.

(4) The purchase price of a new manufactured home and a lot on which to place the home financed with a combination loan includes the retail costs to the borrower, as itemized in the purchase contract(s), of all items set forth in paragraph (d)(1) of this section. The purchase price of an existing manufactured home and lot financed with a combination loan includes the retail costs to the borrower, as itemized in the purchase contract(s), of all items set forth in paragraph (d)(2) or (d)(3) of this section, as applicable.

(e) *Manufactured home loan limits in high-cost areas.* (1) The maximum loan amounts otherwise applicable under paragraphs (b), (c) and (d) of this section may be increased by an amount not to exceed 40 percent where the manufactured home and/or lot is purchased and located in Alaska, Guam or Hawaii.

(2) The maximum loan amounts otherwise applicable under paragraphs (c) and (d) of this section may be increased for any geographical area except Alaska, Guam or Hawaii to the extent deemed necessary by the Secretary; however, such increase cannot exceed the percentage by which the Secretary increases the maximum mortgage amount for a one-family residence in the same area, as published by notice in the FEDERAL REGISTER in accordance with 24 CFR 203.18b. The Secretary may, from time to time, establish a schedule of areas where increased maximum loan amounts are applicable by publishing notice of the higher dollar limits in the FEDERAL REGISTER.

(f) *Loan refinancing.* (1) The total principal obligation of a loan made to refinance a borrower's existing insured property improvement loan shall not exceed the maximum loan amount permitted under this section for the particular type of loan, provided that any amount in excess of the cost to the borrower of prepaying the existing loan shall be made available only to finance additional property improvements meeting the requirements of this part.

(2) The total principal obligation of a loan made to refinance a borrower's existing insured manufactured home loan shall not exceed the lesser of the cost to the borrower of prepaying the existing loan or the maximum loan amount permitted under this section for the particular type of loan.

(3) The total principal obligation of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall not exceed the cost to the borrower of prepaying the existing loan or the appraised value (as determined by a HUD-approved appraisal) of the property, whichever is less, up to the maximum loan amount permitted under this section for the particular type of loan.

(4) Where a borrower's existing uninsured manufactured home lot loan is being refinanced in connection with the purchase of a manufactured home, the total principal obligation of the combination loan shall be determined in accordance with paragraph (d)(1) or (d)(2) of this section.

(g) *Minimum loan amount.* A lender may not require, as a condition of providing a loan insured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33406, Sept. 3, 1987; 53 FR 8880, Mar. 18, 1988; 54 FR 10537, Mar. 14, 1989; 54 FR 36264, Aug. 31, 1989]

§ 201.11 Loan maturities.

(a) *Property improvement loans.* The term of a property improvement

loan shall be not less than six months and not more than 15 years and 32 days from the date of the loan, except that the maximum term of a manufactured home improvement loan shall not exceed 12 years and 32 days from the date of the loan.

(b) *Manufactured home loans.* The term of a manufactured home loan shall be not less than six months and not more than 20 years and 32 days from the date of the loan, except that:

(1) The maximum term for a manufactured home lot loan shall not exceed 15 years and 32 days from the date of the loan; and

(2) The maximum term for a multi-module manufactured home and lot in combination shall not exceed 25 years and 32 days from the date of the loan.

(c) *Loan refinancing.* A loan to be refinanced under this part may be refinanced for an extended period.

(1) The term of a loan made to refinance a borrower's existing insured property improvement loan or existing insured manufactured home loan shall not exceed the maximum term permitted under paragraph (a) or (b) of this section for the particular type of loan, so long as the final maturity from the date of the original loan does not exceed the following time limits:

(i) 22 years for a manufactured home improvement loan;

(ii) 20 years for a manufactured home lot loan;

(iii) 30 years for a multi-module manufactured home and lot in combination; and

(iv) 25 years for all other property improvement and manufactured home loans.

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall be based upon the appraisal required under § 201.10(f)(3), but in any case shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(3) Where a borrower's existing uninsured manufactured home lot loan is being refinanced in connection with the purchase of a manufactured home, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for that particular type of loan.

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33406, Sept. 3, 1987; 54 FR 10537, Mar. 14, 1989]

§ 201.12 Requirements for the note.

The note shall bear the genuine signature of each borrower and of any co-maker or co-signer, be valid and enforceable against the borrower and any co-maker or co-signer, and be complete and regular on its face. The borrower and any co-maker or co-signer shall execute the note for the full amount of the loan obligation. Although the note may be executed by the borrower on an earlier date, the date of the loan for any loan insured under this part shall be the date that the loan proceeds are disbursed by the lender. Such date shall be entered on the note when disbursement occurs. No loan obligation for any Title I loan application that is approved on or after the effective date of these regulations shall be originated or purchased by a lender or registered for insurance under this part if the loan obligation is evidenced by a "discount" or "add-on" note, in which the loan amount (face amount or value) includes both the principal borrowed and interest at an agreed rate accumulated at maturity, or if such accumulated interest amount (or an equivalent time-price charge for the value of the principal outstanding during the loan term) is discounted or deducted in advance as a charge for the loan with the borrower receiving only a net amount of proceeds or credit. The note, for any Title I loan application that is approved on or after the effective date of these regulations, shall separately recite the principal amount (proceeds or credit) and any interest at an agreed annual rate which comprise the borrower's payment obligation. However, nothing herein shall preclude a lender from purchasing or selling a loan obligation otherwise eligible for Title I insurance under this part at a discount or premium price with respect to its loan amount (face amount or value). The lender shall assure that the note and all other documents evidencing the loan transac-

tion are in compliance with applicable Federal, State and local laws. If the note is executed on behalf of a corporation, partnership or trust by an authorized representative, it shall create a binding obligation on such entity.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989]

§ 201.13 Interest and discount points.

The interest rate for any loan shall be negotiated and agreed to by the borrower and the lender, and such interest rate shall be fixed for the full term of the loan and recited in the note. The lender and the borrower may negotiate the amount of discount points, if any, to be paid by the borrower in connection with the loan transaction as part of the borrower's initial payment. The lender also may negotiate with the dealer the amount of discount points, if any, to be paid by the dealer from its own resources for the benefit of the borrower before or at the time of the borrower's initial payment to the lender. The dealer shall not accept reimbursement for any such payment of discount points from the borrower, manufacturer or any other party. The lender shall not require or allow any parties other than the borrower or the dealer to pay any discount points or other financing charges in connection with approving or disbursing proceeds of the loan transaction. The lender and dealer need not disclose to the borrower the amount of any discount points to be paid by the dealer to the lender, but they shall comply with any Federal or State requirements for disclosure to the borrower of financing charges to be paid by the borrower, including the interest rate and any discount points. Interest on the loan shall accrue from the date of the loan, and shall be calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989]

§ 201.14 Payments on the loan.

The note normally shall provide for equal installment payments due weekly, biweekly, semi-monthly or monthly. The note may provide for either or both of the first and final payments to vary in amount but not to exceed 1½ times the regular installment. Where the borrower has an irregular flow of income, the note may be payable at quarterly or semi-annual intervals corresponding with the borrower's flow of income. The first scheduled payment after the borrower's initial payment shall be due no later than two months from the date of the loan. Multiple payment schedules may not be used in connection with any loan.

§ 201.15 Late charges to borrowers.

(a) *Imposition of late charge.* The note may provide for imposition of a late charge unless precluded by State law. The late charge may be imposed only for installments of principal and interest which are in arrears for the greater of 15 calendar days or the number of days required by applicable State law before such a charge may be imposed. Late charges must be billed to the borrower or reflected in the payment coupon, and evidence of any late charges that have been paid must be in the loan file if an insurance claim is made.

(b) *Amount of late charge.* The late charge shall not exceed the lesser of five percent of each installment of principal and interest, up to a maximum of $10 per installment for any property improvement loan and $15 per installment for any manufactured home loan, or the maximum amount permitted by applicable State law.

(c) *Method of payment.* Payment of any late charge cannot be deducted from the monthly payment for principal and interest, but must be an additional charge to the borrower.

(d) *Daily interest in lieu of late charges.* In lieu of late charges, the note may provide for interest to accrue on installments in arrears on a daily basis at the interest rate in the note.

[54 FR 36264, Aug. 31, 1989]

§ 201.16 Default provision.

The loan note shall contain a provision for acceleration of maturity, at

the option of the holder, upon a default by the borrower.

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan. Where the loan is prepaid in full, the lender shall rebate the full unearned interest on the loan, except that a minimum retained handling charge may be deducted from the rebate if permitted by State or local law. Unearned interest shall be determined in accordance with the actuarial method.

§ 201.18 Modification agreement of repayment plan.

(a) *Modification agreement or repayment plan.* A written but unrecorded modification agreement acceptable to the lender and executed by the borrower may be used in lieu of refinancing of a delinquent or defaulted loan to reduce or increase the monthly payment, but not to increase the term or the interest rate, so as to assure that the delinquent or defaulted loan is brought current before or by the end of the loan term. A modification agreement may also be used in lieu of refinancing in connection with a loan that is current to effect a reduction in the interest rate, and in the monthly payment, for the remainder of the loan term. When a modification agreement is used, no insurance reporting is required under § 201.30.

(b) *Repayment plan.* The lender may elect to negotiate an informal repayment plan with the borrower to enable a temporary delinquency to be cured within a short period of time. The lender may document the terms of the repayment plan by sending a letter to the borrower reciting the terms of their agreement. When a repayment plan is used, no insurance reporting is required under § 201.30.

[52 FR 33406, Sept. 3, 1987, as amended at 54 FR 10537, Mar. 14, 1989]

§ 201.19 Refinanced loans.

(a) *Conditions on refinancing.* (1) An existing insured property improvement loan or manufactured home loan may be refinanced without an advance of funds only under the following conditions:

(i) If the loan is in default and its maturity has been accelerated, it may not be refinanced unless the acceleration has been rescinded and the loan has been reinstated in accordance with § 201.50(c);

(ii) The refinancing of a loan for the original borrower shall be subject to all of the requirements of this part, except §§ 201.30(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26;

(iii) If there are co-makers or co-signers on the original note, the lender shall require the same co-makers or co-signers on the refinanced note, unless the lender obtains the Secretary's approval to release a co-maker or co-signer from liability under the note in accordance with § 201.24(e); and

(iv) The refinancing of a loan that has been assumed by a new borrower shall be subject to all of the requirements of this part, except §§ 201.20(b) and (c), 201.21(b) through (e), 201.23, and 201.26; however, a lender may not refinance a loan that has been assumed by a new borrower unless the Secretary's approval to release the original borrower from liability under the note has been obtained in accordance with § 201.24(e).

(2) An existing insured property improvement loan may be refinanced with an advance of funds for additional improvements only under the following conditions:

(i) The existing insured loan must not be in default; and

(ii) The refinancing shall be subject to all of the requirements of this part applicable to the particular type of loan and to the additional improvements being financed.

(3) An existing uninsured manufactured home loan may be refinanced only for the original borrower and only under the following conditions:

(i) The existing uninsured loan must not be in default;

(ii) Refinancing of an existing uninsured manufactured home purchase loan or combination loan shall be subject to all of the requirements of this part applicable to the particular type of loan, except §§ 201.23 and 201.26(b)(2)(iv), (3) (i) and (ii), (b)(4), (b)(6) through (b)(8), and (b)(10); and

(iii) Refinancing of an existing uninsured manufactured home lot loan in connection with the purchase of a manufactured home shall be subject to all of the requirements of this part.

(b) *Note and security requirements.* (1) Refinancing of a loan requires the execution of a new note and cancellation of the old note.

(2) Refinancing of a loan that was secured when originated, regardless of the principal balance of the note at the time of refinancing, is required to be secured.

(3) Refinancing of a loan that was not secured when originated is not required to be secured if no additional funds are advanced.

(4) When a refinanced loan is secured, the lender shall obtain and record a new security instrument in accordance with § 201.24 and shall release the original lien, unless State law permits a renewal and extension of the original lien.

(5) Copies of all documents pertaining to the original loan must be retained in the loan file for the refinanced loan.

[52 FR 33406, Sept. 3, 1987]

Subpart C—Eligibility and Disbursement Requirements

§ 201.20 Property improvement loan eligibility.

(a) *Borrower eligibility.* (1) To be eligible for a property improvement loan (other than a manufactured home improvement loan), the borrower shall have at least a one-half interest in one of the following:

(i) Fee simple title to the real property;

(ii) Lease of the real property for a fixed term which expires not less than six calendar months after the final maturity of the loan; or

(iii) A properly recorded land installment contract for the purchase of the real property.

(2) To be eligible for a manufactured home improvement loan, the borrower shall have at least a one-half interest in the manufactured home.

(b) *Eligible use of loan proceeds.* (1) The loan proceeds shall be used only for the eligible purposes disclosed in the loan application. A manufactured home improvement loan may be used only for a home that is the principal residence of the borrower and has been completed and occupied for at least 90 days prior to the date of the loan application.

(2) The loan proceeds shall be used only to finance property improvements which substantially protect or improve the basic livability or utility of the property. The Secretary will publish by Notice in the FEDERAL REGISTER a list of items and activities which shall not be financed with the proceeds of any property improvement loan. From time to time the Secretary may amend such a list by Notice in the FEDERAL REGISTER. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(3) The loan proceeds shall only be used to finance property improvements which are started after approval of the loan application.

(c) *Special pre-application requirements.* (1) Where the proceeds are to be used for an historic preservation loan, the proposed improvements shall be reviewed and approved by the State Historic Preservation Officer (or other person authorized by the Secretary of the Interior to make such reviews) prior to making application for a loan. The purpose of the review is to determine that (i) the structure is an historic residential structure listed on the National Register of Historic Places or certified by the Secretary of the Interior as conforming with National Register criteria, and (ii) the proposed improvements comply with criteria set by the Secretary of the Interior for the preservation of historic structures.

(2) Where the proceeds are to be used for a fire safety equipment loan, the proposed improvements shall be reviewed and approved by the State or local agency having primary jurisdiction over the fire safety requirements of health care facilities prior to making application for a loan.

§ 201.21 Manufactured home loan eligibility.

(a) *Borrower eligibility.* To be eligible for a manufactured home loan (whether a manufactured home purchase loan, a manufactured home lot loan, or a combination loan), the borrower must become the owner of the particular property which is to be financed with such a loan. Where the loan involves a manufactured home which is classified as realty, ownership of the home must be in fee simple. Where the loan involves a manufactured home lot, ownership of the lot must be in fee simple, except where the lot consists of a share in a cooperative association which owns and operates a manufactured home park.

(b) *Eligible use of loan proceeds.* (1) The loan proceeds may be used for the purchase or refinancing of a manufactured home, a suitably developed lot on which to place a manufactured home already owned by the borrower, or a manufactured home and a suitably developed lot for the home in combination. The loan proceeds may also be used for the purchase of a manufactured home and the refinancing of a manufactured home lot already owned by the borrower. Where the proceeds are for a manufactured home purchase loan or combination loan, the home must be the borrower's principal residence. Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home must be placed on the lot and occupied as the borrower's principal residence within six months after the date of the loan.

(2) A manufactured home financed with an insured loan under this part may be either:

(i) A new home, which is one that is purchased by the borrower within 18 months after the date of manufacture and has not been previously occupied; or

(ii) An existing home, which is one that does not meet the criteria for a new home. In order to be eligible for financing with an insured loan under this part, the manufactured home, its warranty and the site on which the home is placed must meet the requirements of paragraphs (c) through (e) of this section.

(3) The proceeds of a manufactured home loan shall not be used to purchase furniture.

(4) The proceeds of a manufactured home purchase loan may be used for the purchase, construction or installation of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary. The proceeds of a combination loan may be used for the purchase, construction or installation of a permanent foundation, garage, carport, patio or other comparable appurtenance to the manufactured home.

(5) The Secretary will publish by notice in the FEDERAL REGISTER a list of items and activities which may not be financed with the proceeds of any manufactured home loan. From time to time the Secretary may amend such a list by notice in the FEDERAL REGISTER. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(c) *Construction, invoice, transportation and installation requirements.* (1) The manufactured home shall be certified by the manufacturer under applicable criminal and civil penalties for fraud and misrepresentation to have been constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401-5426, so as to conform to all applicable Federal construction and safety standards, as evidenced by a label or tag affixed to the manufactured home in accordance with 24 CFR 3280.8.

(2) The lender shall obtain from the dealer a copy of the manufacturer's invoice for retention in the loan file.

(3) During any period of transportation from the factory to the borrower's homesite a manufactured home's structural integrity shall be maintained so that as designed it will be livable and durable. The home's installation or erection on the homesite shall comply with the manufacturer's requirements for its anchoring, support, stability and maintenance. Thereafter the dealer shall inspect the manufactured home and its components for structural damage, and shall test the

performance of its plumbing, mechanical and electrical systems.

(d) *Manufacturer's warranty requirements.* (1) To induce the Secretary to insure a Title I loan under this part for the purchase of a new manufactured home and to induce a borrower to purchase such a home, the home manufacturer shall furnish the borrower with a written warranty, duly executed by an authorized representative of the manufacturer on a HUD-approved form. The warranty shall be provided without cost to the borrower. The effective date of the warranty shall be the date of delivery of the manufactured home to the borrower, regardless of when the warranty was executed by the manufacturer or was delivered to the borrower.

(2) The warranty shall obligate the home manufacturer to take appropriate action to correct any nonconformity with the standards prescribed in paragraph (c)(1) of this section or any defects in materials or workmanship which become evident within one year after the date of delivery. This warranty shall be in addition to, and not in derogation of, all other rights and privileges which the borrower may have under any other law or instrument during such period or thereafter. A copy of the warranty shall be retained in the lender's loan file.

(3) Prior to making a loan involving a new manufactured home, the lender shall investigate whether the home manufacturer is substantially complying with its warranty obligations on other homes financed by the lender under any program. If the lender knows, because of consumer complaints, dealer comments or other information concerning the manufacturer received in the course of business, that consumers have complained about warranty performance, the lender shall ascertain whether such complaints have been resolved. The lender's findings shall be documented in the loan file. Such documentation may reference information or materials contained in other files of the lender, provided that the file contains a written certification signed by a responsible loan officer under applicable criminal and civil penalties for fraud and misrepresentation that the lender's findings are supported by such other information or materials.

(4) If the lender concludes under paragraph (d)(3) of this section that a manufacturer may not be honoring its warranties, the lender shall immediately notify the Secretary in writing with documentation of the facts and circumstances.

(e) *Manufactured homesite standards.* (1) To assure the suitability of the homesite, the manufactured home shall be placed on a leased site in a manufactured home park or on an individual manufactured home lot or other site owned or leased by the borrower that meets the following standards. A manufactured home may be placed on a site within Indian trust or otherwise restricted lands if the borrower owns or leases the site, or if the borrower obtains written permission acceptable to the Secretary from the trustee or the tribal authority who controls the use of the site.

(2) The manufactured homesite shall be served by adequate public or community water and sewerage systems, unless appropriate local officials certify that either or both such systems are unavailable to provide an adequate level of service to the manufactured homesite. If either or both such systems are not available, the manufactured homesite shall comply with local or State minimum lot area requirements for the provision of onsite water supply and/or sewage disposal.

(3) When the manufactured home is to be placed on a leased site in a manufactured home park, the lender shall obtain certifications from the appropriate State or local government officials that the park complies with minimum standards relating to vehicular access, water supply, sewage disposal, utility connections, and other aspects of park development. Where minimum State and local standards for park development are not established or enforced, the lender shall obtain a certification from a registered civil engineer that the park meets minimum standards for park development prescribed by the Secretary.

(4) When the manufactured home is to be placed on an individual manufactured home lot or other site owned or

leased by the borrower (or on an Indian land site under paragraph (x)(1) of this section), the lender shall obtain certifications from the appropriate local government officials that:

(i) The site complies with local zoning ordinances and regulations, if any;

(ii) Adequate vehicular access from a public right-of-way is available to the site;

(iii) Adequate water supply and sewage disposal facilities are available to or on the site; and

(iv) Any other minimum local standards and requirements for site suitability are met. Where minimum local standards for water supply and sewage disposal are not established or enforced, the lender shall obtain a certification from a registered civil engineer that the site meets minimum standards for water supply and sewage disposal prescribed by the Secretary.

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[50 FR 43523, Oct. 25, 1985; 51 FR 1496, Jan. 14, 1986, as amended at 54 FR 36264, Aug. 31, 1989]

§ 201.22 Credit requirements for borrowers.

(a) *Credit application and review.* (1) Before making a loan insured under this part, the lender shall exercise prudence and diligence to determine whether the borrower and any co-maker or co-signer is solvent and an acceptable credit risk, with a reasonable ability to make payments on the loan obligation. All documentation supporting this determination and relating to the lender's review of the credit of the borrower and of any co-maker or co-signer shall be retained in the loan file.

(2) The lender shall obtain a separate dated credit application on a HUD-approved form from and executed by the borrower and by any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation for each loan made. The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of or otherwise document the current employment and current income of the borrower and of any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years, the lender shall obtain written verification of or otherwise document the person's prior employment and prior income during the two-year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's income during such period of self-employment.

(3) The lender shall also determine the total amount of the borrower's existing and proposed Title I loans to ensure that the loan amounts in § 201.10 are not exceeded.

(4) As part of its credit investigation, the lender shall obtain a consumer credit report stating the credit accounts and payment history of the borrower and of any co-maker or co-signer. Subject to state or local law, the lender shall check with the inquirers concerning all credit inquiries reported within the previous 90 days to determine whether the borrower or the co-maker or co-signer has incurred debts not listed on the credit application. If a consumer credit report is not available or is incomplete, the loan file shall contain other documentation of the lender's diligent investigation of the credit of the borrower or of the co-maker or co-signer.

(5) For any manufactured home loan, the lender shall obtain written verification of the existence of all funds of the borrower required for the borrower's initial payment.

(6) After a thorough credit investigation and in the absence of information to the contrary, the lender may rely upon all statements of fact made by the borrower or any co-maker or co-signer in a credit application.

(b) *Income requirements for manufactured home loans.* For any manufactured home loan, the credit application and review must establish that the borrower's income will be adequate to meet both the periodic payments required by the loan and to meet other recurring charges. For a borrower's income to be considered adequate, housing expenses and other

recurring charges generally may not exceed maximum percentages of net effective income which the Secretary will publish by Notice in the FEDERAL REGISTER based upon generally prevailing interest rates and upon HUD's experience of claims/loan ratios, for prospective use by lenders in approving manufactured home loan applications. Net effective income includes continuing income from all sources which may reasonably be expected to continue during the first two years of the loan obligation. The income percentage limitations will apply to the borrower's total prospective housing expense payments related to the loan (principal, interest, loan insurance charge, ground rent or leasehold, utilities, hazard insurance, extended warranty or service contract, and realty taxes), as well as the sum of the prospective housing expense payments and other recurring charges. If either of the published income percentage limitations is exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of other factors with respect to the borrower's income and creditworthiness which support approval of the loan.

(c) *Evidence of delinquency, default or misrepresentation.* Except with the prior approval of the Secretary the lender shall not approve a loan if the lender has knowledge of any of the following circumstances:

(1) The borrower is past due more than 30 days as to the payment of principal or interest under the original terms of an obligation owed to or insured or guaranteed by the Federal government, regardless of whether any terms of such obligation have been modified, and the default has not been cured, or the debt has not been discharged or satisfied; or

(2) The borrower has previously made material misstatements of fact on applications for loans or other assistance.

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[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 54 FR 10537, Mar. 14, 1989]

§ 201.23 Borrower's initial payment.

(a) *General requirement.* The borrower shall be responsible for payment in cash of any costs, other than discount points paid by a dealer to a lender under § 201.13, which will not be paid or are not eligible to be paid from the proceeds of the loan. Such costs payable by the borrower may include a loan origination fee, if imposed by the lender, any required downpayment, any discount points to be paid by the borrower to the lender, any other fees and charges which may not be financed, and any other costs in excess of the maximum loan obligation. No part of such costs payable by the borrower may be borrowed from or advanced or paid to or for the benefit of the borrower by the dealer, the manufacturer or any other party to the loan transaction. If the borrower obtains all or any part of such costs through a gift or a loan from some other source, the borrower must disclose the source of such gift or loan on the credit application, and any such loan must be secured by property or collateral owned by the borrower independently of the property securing repayment of the Title I loan. The lender shall analyze any such loan obligation in performing the credit investigation. Documentation of any required downpayment shall be retained by the lender in the loan file.

(b) *Manufactured home purchase loans.* (1) In the case of a manufactured home purchase loan for a new home, the borrower shall make a minimum cash downpayment of at least five percent of the first $5,000 and 10 percent of the balance of the purchase price of the home.

(2) In the case of a manufactured home purchase loan for an existing home, the borrower shall make a minimum cash downpayment of at least 10 percent of the purchase price of the home.

(3) Nothing other than the borrower's equity in an existing manufactured home and any attached appurtenances may be traded-in on a new home and accepted in lieu of full or partial cash downpayment. The existing manufactured home being traded-in shall be clearly identified, and the

method and all computations used to determine the borrower's equity in the home shall be clearly documented.

(c) *Manufactured home lot loans.* In the case of a manufactured home lot loan, the borrower shall make a minimum cash downpayment of at least 10 percent of the total of the purchase price and development costs for the lot.

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the first $5,000 and 10 percent of the balance of the purchase price of the manufactured home and lot. Where the borrower already owns a lot on which a manufactured home is to be placed, the borrower's equity in the lot (but nothing else) may be accepted in lieu of full or partial cash downpayment on the combination loan.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989]

§ 201.24 Security requirements.

(a) *Property improvement loans.* (1) Any property improvement loan in excess of $5,000 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple. Where the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. Where the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all intervening contract sellers must execute the mortgage or deed of trust. The lien need not be a first lien on the property, but when the loan proceeds are used to supplement an uninsured loan made by the lender at the same time and in connection with the same property, the lien on the insured loan must have priority over any lien on the uninsured loan.

(2) Any property improvement loan for $5,000 or less (other than a manufactured home improvement loan) shall be similarly secured if, including such loan, the total amount of all title I property improvement loans obtained by the borrower is more than $5,000.

(3) Manufactured home improvement loans need not be secured.

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the home (or lot or home and lot, as appropriate), its furnishings, equipment, accessories, and appurtenances. The lien shall be a first lien, superior to any other lien on that property, and shall be evidenced by a properly recorded financing statement, a properly recorded security instrument executed by the borrower and any other owner of the property, or another acceptable instrument, such as a certificate of title issued by the State and containing a recitation of the lender's lien interest in the manufactured home.

(c) *Recording and perfection of security.* The lender shall assure that the legal description of the property as recited in the security instrument is accurate, and that the security instrument creates a valid and enforceable lien on the property in the jurisdiction in which the property is located. The security instrument shall be recorded and perfected in the manner specified by applicable State law in the State where the property is located.

(d) *Substitution or subordination of security.* The Secretary may approve substitution or subordination of security where the security value will not be impaired or reduced.

(e) *Release of liability or lien.* The lender shall not release the borrower or any co-maker or co-signer from any liability under a note or from any lien securing a loan insured under this part without the prior approval of the Secretary.

[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 54 FR 36265, Aug. 31, 1989]

§ 201.25 Charges to borrower to obtain loan.

(a) *Origination fee.* The lender may require that the borrower pay an origination fee, not to exceed one percent of the loan amount, excluding any amount to refinance the outstanding balance of an existing Title I loan made or held by the lender.

(b) *Fees and charges which may be financed.* (1) The following fees and

charges incurred in connection with a property improvement loan may be included in the loan amount, so long as their inclusion does not increase the total principal obligation beyond the loan amounts permitted in § 201.10:

(i) Fees for architectural and engineering services;

(ii) Building permit costs;

(iii) Premiums for flood insurance, where applicable;

(iv) Credit report costs; and

(v) A fee for an actual inspection of the property under § 201.40(b)(2), by the lender or its agent, not to exceed $50, but only where the total principal obligation is $7,500 or more.

(2) The following fees and charges incurred in connection with a manufactured home loan may be included in the loan amount, so long as their inclusion does not increase the total principal obligation beyond the loan amounts permitted in § 201.10:

(i) State and local sales taxes paid by the borrower;

(ii) Premiums paid by the borrower for comprehensive and extended hazard insurance and secured interest protection coverage for the first three years, including premiums for flood insurance, where applicable;

(iii) Premiums paid by the borrower for a homeowner's extended warranty contract or extended service contract on the manufactured home, whether offered by the manufacturer or by the dealer for a period not to exceed three years;

(iv) Credit report costs; and

(v) A fee for inspection of the property under § 201.26(b)(7) by the lender or its agent, not to exceed $50.

(c) *Fees and charges which may not be financed.* The following fees and charges incurred by the lender in connection with a loan insured under this part may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, if any, or any other party to the loan transaction:

(1) An origination fee, referenced in paragraph (a);

(2) Any discount points to be paid by the borrower to the lender;

(3) Recording fees, recording taxes and filing fees;

(4) Documentary stamp taxes;

(5) Title examination and title insurance costs;

(6) Payments into a tax and insurance escrow account for the current year;

(7) Other fees necessary to establish the validity of a lien;

(8) Appraisal fees;

(9) Survey costs;

(10) Handling charges to refinance or modify an existing loan, not to exceed $25; and

(11) Such other items as may be specified by the Secretary.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 36265, Aug. 31, 1989]

§ 201.26 Conditions for loan disbursement.

(a) *Property improvement loans.* The lender shall comply with the following applicable requirements before disbursing the proceeds of a property improvement loan.

(1) The lender shall ensure that the borrower is eligible for a property improvement loan in accordance with § 201.20(a), and shall ensure that the interest of the borrower in the property is valid, through such title or other evidence as is acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated.

(2) If there is a written contract between the borrower and the contractor, dealer or seller (of goods and services), describing the work to be performed and its estimated cost, the lender shall obtain a copy thereof for retention in the loan file. If there is no contract, in addition to any information contained in the credit application, the borrower shall be required separately to furnish a written description of the work to be performed and its estimated cost.

(3) Where the proceeds are to be used for an historic preservation loan, the lender shall ensure that the proposed improvements have been approved by the State Historic Preservation Officer in accordance with § 201.20(c).

(4) Where the proceeds are to be used for a fire safety equipment loan,

the lender shall ensure that the proposed improvements have been approved by the State or local agency having jurisdiction over the fire safety requirements of health care facilities in accordance with § 201.20(c).

(5) In the case of a dealer loan, the lender shall obtain a completion certificate, on a HUD-approved form and signed by the borrower and the dealer under applicable criminal and civil penalties for fraud and misrepresentation, certifying that (i) the improvements are eligible and have been completed in general accordance with the contract or cost estimate furnished to the lender, and (ii) except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of value in excess of $10 from the dealer as an inducement for the consummation of the transaction.

(6) The lender shall assure that the loan file is complete and contains the note, security instrument, and copies of all other documents relating to the property improvement loan transaction.

(b) *Manufactured home loans.* The lender shall comply with the following applicable requirements before disbursing the proceeds of a manufactured home loan.

(1) The lender shall ensure that the borrower is eligible for a manufactured home loan in accordance with § 201.21(a).

(2) The lender shall assure that the loan file is complete, and shall obtain the following documents for retention in the loan file:

(i) A signed copy of the purchase contract between the borrower and the dealer or seller;

(ii) A copy of the manufacturer's invoice, where the loan involves the purchase of a new manufactured home;

(iii) Copies of itemized statements of other costs, fees and charges, whether paid by the borrower or financed with the loan proceeds;

(iv) Certification by the dealer under applicable criminal and civil penalties for fraud and misrepresentation that neither the dealer nor, to the dealer's knowledge, the manufacturer or any other party to the transaction has loaned, advanced or paid to or for the benefit of the borrower any part of the costs included in the borrower's initial payment under § 201.23, and that the borrower's initial payment was made; and

(v) The note, security instrument and copies of all other documents relating to the loan transaction.

(3) The lender shall obtain certifications from the borrower under applicable criminal and civil penalties for fraud and misrepresentation that:

(i) The borrower's initial payment under § 201.23 was made and that no part of the costs payable by the borrower and included therein was borrowed from or otherwise advanced or paid to or for the benefit of the borrower by the dealer, the manufacturer or any other party to the transaction, and if all or part of such costs were obtained through a loan from someone other than a party to the transaction, the source of and any security for such loan is disclosed on the loan application;

(ii) Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home will be placed on the lot and will be occupied as the borrower's principal residence within six months after the date of the loan;

(iii) If the wheels and axles are purchased as specialty items with loan proceeds (only under a manufactured home purchase loan), the borrower acknowledges that as part of the secured property they may only be sold or otherwise disposed of with the lender's prior approval;

(iv) While any portion of the loan obligation on a manufactured home purchase loan is unpaid, the manufactured home may be moved only to a new site in compliance with § 201.21 (c) and (e), and only with the lender's prior approval;

(v) While any portion of the loan obligation on a combination loan is unpaid, the manufactured home will not be moved to a new site; and

(vi) Prior to disbursement of the proceeds of a manufactured home loan, the borrower will pay in full the unpaid balance on any other insured manufactured home loan secured by a

different property, unless the Secretary waives this requirement.

(4) In the case of a manufactured home purchase loan or combination loan, the lender shall obtain a placement certificate on a HUD-approved form, and executed under applicable criminal and civil penalties for fraud and misrepresentation as follows:

(i) By the borrower, stating that the manufactured home is to be occupied as the borrower's principal residence;

(ii) By the borrower and the dealer, stating that, except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than a nominal value of $10 from the manufacturer or dealer as an inducement for the consummation of the transaction; and

(iii) By the dealer, stating that:

(A) The manufactured homesite meets the requirements of § 201.21(e);

(B) The manufactured home's installation or erection on the homesite complies with the manufacturer's requirements for its anchoring, support, stability and maintenance;

(C) The dealer has performed the inspection and tests required under § 201.21(c)(3) and, as installed or erected on the homesite, the manufactured home has sustained no structural damage or other defects, and all plumbing, mechanical and electrical systems are fully operational; and

(D) Any discount points to be paid by the dealer to the lender under § 201.13 are from the dealer's own resources and will not be reimbursed by the borrower, manufacturer or any other party.

(5) The lender shall obtain and file the certifications by local officials or a civil engineer which are required under § 201.21(e) to document the suitability of the manufactured homesite.

(6) The lender shall disburse loan proceeds to a dealer or seller only under the following procedures:

(i) In the absence of information to the contrary, the lender may accept and rely upon a certification by the dealer or seller under applicable criminal and civil penalties for fraud and misrepresentation that the manufa tured home, any options (large appl cances, built-in items and equipment and any specialty items included i the purchase price of the home or t be financed with loan proceeds ha been delivered to and properly in stalled or erected on the site, and an other work to be accomplished at th site and financed with loan proceed has been completed. The lender the may disburse 100 percent of the loa proceeds without basing its decisio upon the results of a site inspectio under paragraph (b)(7) of this section.

(ii) If the dealer or seller can only provide the lender with a partial certification under paragraph (b)(6)(i) be cause some items included in the pur chase price of the home or to be fi nanced with loan proceeds have no been delivered or completed, th lender shall disburse into escrow th greater of 10 percent of the loan pro ceeds or the cost to the borrower o such items as specified by the deale or seller, and disburse the balance t the dealer or seller. The escrowed pro ceeds shall not be released to th dealer or seller until the lender re ceives an acceptable certification con cerning the delivery or completion o such missing items, or until the lende finds that disbursement is justifie after conducting a site inspectio under paragraph (b)(7) of this section

(iii) If the lender is unable to deter mine, through such certification o site inspection, that within 30 calenda days after disbursement of loan pro ceeds the dealer or seller has delivere and completed all items included i the purchase price of the manufac tured home or to be financed wit loan proceeds, the following require ments apply to the loan:

(A) If without the undelivered or un completed items the manufacture home as installed or erected on th site is durable and liveable unde standards prescribed by the Secretary and is acceptable to the borrower, th loan shall immediately be rewritten i an amount which reflects the deletio of the undelivered or uncompleted items but with terms and condition which otherwise remain the same, th borrower's required investment shal be adjusted accordingly, the borrowe

shall indicate acceptance by executing the new note and security instrument, and the loan as rewritten shall be reported for insurance; or

(B) If the manufactured home does not meet the requirements of paragraph (b)(6)(iii)(A), in that without the undelivered or uncompleted items the manufactured home as installed or erected on the site is durable and liveable but is not acceptable to the borrower, or is not durable and liveable, the loan is not insurable under this part. Pursuant to a limited recourse agreement under § 201.27(b)(2), the lender thereafter may require the dealer or seller to purchase the uninsured loan.

(7) The lender or its agent may conduct a site-of-placement inspection as referenced in this paragraph to verify that: (i) The terms and conditions of the purchase contract have been met, (ii) the manufactured home, any options, and any specialty items included in the purchase price of the home or to be financed with loan proceeds have been delivered and completed, (iii) the certification by the dealer or seller under paragraph (b)(6) is correct, and (iv) the placement certificate executed by the borrower and the dealer or seller is in order. If an inspection is conducted, the results of the inspection shall be documented in the loan file.

(8) If as a result of an inspection, the lender determines that the dealer or seller falsely or erroneously certified under paragraph (b)(6) that any items included in the purchase price of the manufactured home or to be financed with loan proceeds were delivered and completed, the lender shall immediately notify the Secretary with written documentation of the facts and circumstances.

(9) Where a manufactured home purchase loan involves a manufactured home which is to be located on Indian trust or otherwise restricted lands, the lender shall obtain written permission from the trustee or the tribal authority who controls the site for the lender to repossess the home in the event of default by the borrower and acceleration of the loan.

(10) If disbursement of the loan proceeds is to be made to anyone other than the borrower, the lender shall mail or personally deliver a written notice to the borrower of its intent to disburse not less than six calendar days prior to such disbursement.

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§ 201.27 Requirements for dealer loans.

(a) *Dealer approval and supervision.* (1) The lender shall approve only those dealers which, on the basis of any experience and information, the lender considers to be reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers and to comply otherwise with the requirements of this part. The lender's approval of a dealer shall be documented on a HUD-approved dealer approval form, signed and dated by the dealer and the lender under applicable criminal and civil penalties for fraud and misrepresentation, and containing information supplied by the dealer on its trade name(s), place(s) of business, type of ownership, type of business, and names and employment history of the principal individuals and other parties who control or manage the business. The lender shall require each dealer to apply annually for reapproval. The lender shall require a current financial statement and credit report on the dealer, and may require such other documentation as the lender deems necessary to support its approval or reapproval of the dealer.

(2) The lender shall supervise and monitor each approved dealer's activities with respect to Title I dealer loans involving the dealer that are insured under this part. The lender shall visit each approved dealer's place(s) of business periodically during the year to review its Title I performance and compliance. The lender shall maintain a file on each approved dealer which contains the executed dealer approval form and supporting information required under paragraph (a)(1), together with documentation of the lender's experience with Title I loans involving

the dealer. Such documentation shall include information about borrower defaults on such loans over time, records of completion or site-of-placement inspections conducted by the lender or its agent, copies of letters concerning borrowers' complaints and their resolution, and records of the lender's periodic review visits to dealer premises. If the lender determines that pertinent dealer records relating to one or more Title I transactions are needed to enable the lender to review the dealer's Title I performance and compliance, whether acting at the Secretary's request, or in connection with a periodic review visit or when considering the dealer's request for reapproval, the lender shall require the dealer to furnish such records to the lender.

(3) The lender shall terminate a dealer's approval if the dealer does not satisfactorily perform its contractual obligations to borrowers or comply otherwise with Title I program requirements, or when the dealer is unresponsive to the lender's supervision and monitoring requirements. The lender may in its discretion terminate the approval of a dealer for other reasons at any time. Upon termination of a dealer's approval, the lender shall immediately notify the Secretary with written documentation of the facts and circumstances. A dealer whose approval is terminated shall not be reapproved without prior written approval from the Secretary.

(4) The lender shall require each approved (or reapproved) dealer to provide written notification of any material change in its trade name(s), place(s) of business, type of ownership, type of business, or principal individuals who control or manage the business. The dealer shall furnish such notification to the lender within 30 days after the date of any material change.

(5) As a condition of manufactured home dealer approval (or reapproval), the lender may require a manufactured home dealer to execute a written agreement that, if requested by the lender, the dealer will resell any manufactured home repossessed by the lender under a Title I insured manufactured home purchase loan approved by the lender as a dealer loan involving that dealer.

(b) *Provision for full or partial recourse.* (1) In the case of a dealer-originated manufactured home purchase loan or combination loan, the lender and the dealer may agree to a provision in the loan documents for partial or full recourse against the dealer, to reduce or eliminate the lender's loss in the event of foreclosure or repossession. Such recourse provision shall specify that, for a default occurring within a period of not more than three years from the date of the loan, the dealer shall reimburse the lender for a fixed percentage of the unpaid amount of the loan obligation, after deducting the proceeds from the sale of the property and any amounts received or retained by the lender after the date of default. However, the extent of the dealer's liability may not exceed 100 percent of the unpaid amount of the loan obligation prior to such deductions. When a claim is filed, the lender shall notify the Secretary if the loan was subject to a recourse agreement and whether the recourse agreement has been honored. If without the lender's approval a dealer has failed to honor its recourse obligation, the lender shall notify the Secretary and shall assign the recourse obligation to the Secretary in filing an insurance claim.

(2) The lender also may negotiate a limited recourse agreement with a dealer or seller providing that if a manufactured home purchase loan or a combination loan previously approved by the lender is uninsurable under § 201.26(b)(6)(iii)(B), the lender may require the dealer or seller to purchase the loan from the lender.

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§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.

(a) *Flood insurance.* No property improvement loan or manufactured home loan shall be eligible for insurance under this part if the property securing repayment of the loan is located in an area that has been identified by the Federal Emergency Man-

agement Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and flood insurance on the property is obtained by the borrower in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a). The amount of such insurance need not exceed the unpaid balance of the Title I loan, but the insurance shall be maintained by the borrower for the full term of the loan or until the property is repossessed or foreclosed by the lender, and the lender shall be named as a loss payee of insurance benefits.

(b) *Hazard insurance.* No manufactured home purchase loan or combination loan shall be eligible for insurance under this part unless hazard insurance on the manufactured home is obtained by the borrower and the lender is named as a loss payee of insurance benefits. Such insurance shall be maintained by the borrower for the full term of the loan or until the property is repossessed or foreclosed by the lender, and in an amount at least equal to the unpaid balance of the loan, except that the amount of insurance coverage shall be not less that the actual cash value of the home where State law precludes a higher amount. If the borrower fails to maintain such insurance, the lender shall obtain it at the borrower's expense. If the home is not insured against hazards and sustains damage which would normally be covered by such insurance during the borrower's ownership, the appraised value of the home for claim purposes will be adjusted in accordance with § 201.51(b)(3). Upon acquiring title to the property through repossession or foreclosure, the lender shall maintain hazard insurance upon the property in the amount prescribed above until its disposition and sale.

(c) *Coastal barriers properties.* No Title I insurance shall be made available under this part for any property improvement loan or manufactured home loan except pursuant to a loan application approved before October 18, 1982, with respect to any property within the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 53 FR 10537, Mar. 14, 1989; 54 FR 36265, Aug. 31, 1989]

§ 201.29 Ineligible participants.

No loan may be insured under this part where the lender has been advised in writing by HUD or otherwise knows that any participant in the transaction as a dealer, home manufacturer, contractor, supplier, or broker, or as its agent or representative, has been suspended or debarred, or has otherwise been determined by HUD to be ineligible to participate in the Title I program.

Subpart D—Insurance of Loans

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on the prescribed form to the Secretary within 31 days from the date of the loan's origination or purchase for the loan to be registered for insurance under this part. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No report will be required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement. If, after it is reported for insurance, a manufactured home purchase loan or combination loan is determined to be uninsurable under § 201.26(b)(6)(iii)(B), the lender shall report this fact to the Secretary within 31 days after determining the loan's uninsurability.

(b) *Late reports.* The Secretary may accept a late report on a loan where the lender certifies that the obligation is not in default.

(Approved by the Office of Management and Budget under Control number 2502-0328)

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33407, Sept. 3, 1987]

§ 201.31 Insurance charge.

(a) *Insurance charge.* For each eligible property improvement loan and manufactured home loan reported and acknowledged for insurance, the lender shall pay to the Secretary an insurance charge equal to 0.50 percent of the loan amount, multiplied by the number of years of the loan term. The insurance charge shall be paid in the manner prescribed in paragraph (b) of this section; however, no charge shall be made for a period of 14 days or less, and a charge for a full month shall be made for a period of more than 14 days. There shall be no abatement or refund of an insurance charge except as provided in paragraph (e) of this section.

(b) *Payment of insurance charge.* (1) For any loan having a maturity of 25 months or less, payment of the entire insurance charge prescribed in paragraph (a) of this section is due on the 25th calendar day after the date the Secretary acknowledges the loan report.

(2) For any loan having a maturity in excess of 25 months, payment of the insurance charge shall be made in annual installments, with the first installment due on the 25th calendar day after the date the Secretary acknowledges the loan report, and the second and succeeding installments due on the 25th calendar day after the date of billing by the Secretary. Annual installments shall be paid according to the following schedule:

(i) For any property improvement loan having a maturity in excess of 25 months, payment shall be made in annual installments of 0.50 percent of the loan amount until the insurance charge is paid.

(ii) For any manufactured home loan having a maturity in excess of 25 months but not more than 144 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first three years of the loan term, 0.75 percent of the loan amount for the next two years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(iii) For any manufactured home loan having a maturity in excess of 144 months but not more than 192 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first four years of the loan term, 0.75 percent of the loan amount for the next three years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(iv) For any manufactured home loan having a maturity in excess of 192 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first five years of the loan term, 0.75 percent of the loan amount for the next four years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(3) All insurance charges are considered earned when paid.

(c) *Penalty charge and interest.* Insurance charges not received from the lender by the due date specified in paragraph (b) of this section shall be assessed a penalty charge of four percent of the amount of the payment. Insurance charges received from the lender more than 30 days after the due date specified in paragraph (b) of this section shall also be assessed daily interest at the current United States Treasury value of funds rate, as published periodically in the FEDERAL REGISTER. However, no penalty charge or daily interest shall be assessed if the Secretary fails to acknowledge receipt of the loan report or fails to issue a proper billing to the lender for the insurance charges.

(d) *Adjustment on notes transferred.* Where there is a transfer of loan obligations between lenders and the insurance charges on such obligations have already been paid, any adjustment of such charges shall be made by the lenders involved. Any unpaid installments of the insurance charge shall be paid by the purchasing lender.

(e) *Refund or abatement of insurance charges.* A lender shall be entitled to a refund or abatement of insurance charges only in the following instances:

(1) Where the loan obligation has been refinanced, the unearned portion of the charge on the original obligation shall be credited to the charge on the refinanced loan.

(2) Where the loan obligation is prepaid in full or an insurance claim is filed, charges falling due after such prepayment or claim shall be abated.

(3) When a loan (or portion thereof) is found to be ineligible for insurance, charges paid on the ineligible portion shall be refunded, except where the Secretary determines that there was fraud or misrepresentation by the lender in the loan transaction. Such refund shall be made only if a claim is denied by the Secretary or the ineligibility is reported by the lender promptly upon discovery and confirmed by the Secretary. In no event shall a charge be refunded on the basis of loan ineligibility where the application for refund is made after the loan is paid in full. If a loan or claim has been denied and is subsequently resubmitted, the refunded amount of the insurance charge plus any accrued insurance charge shall be repaid.

(f) *Lender passing insurance charge on to borrower.* The insurance charge may be passed on to the borrower, provided that such charge is fully disclosed to the borrower.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 36265, Aug. 31, 1989]

§ 201.32 Insurance coverage reserve account.

(a) *Establishment.* The Secretary shall establish an insurance coverage reserve account (formerly known as an "insurance reserve") for each lender holding a valid Title I Contract of Insurance and approved under HUD regulations at 24 CFR Part 202 and this part to originate and purchase Title I loans. The amount of insurance coverage in the reserve account shall equal 10 percent of the amount disbursed, advanced or expended by the lender in originating or purchasing eligible loans registered for insurance under this part, less the amount of all insurance claims approved for payment in connection with losses on such loans, and less the amount of any annual adjustment made in accordance with paragraph (b) of this section, and shall be maintained with no earmarking.

(b) *Annual adjustment of insurance coverage.* (1) Except for deductions for any insurance claim payments to the lender and transfers of insurance coverage amounts pursuant to paragraphs (c) and (d) of this section, the Secretary shall not make any adjustment to a lender's insurance coverage reserve account during the first five years of the Title I contract of insurance issued to a newly approved lender (one not so approved previously, or one formerly approved whose previous Title I contract of insurance was terminated but not reinstated by the Secretary during the five year period preceding the issuance date of the new Title I insurance contract). On the first day of October following the expiration of a period of 60 months after the date a Title I insurance contract is issued to a newly approved lender, and on October 1 of each year thereafter, the Secretary shall adjust the amount of insurance coverage in the lender's reserve account by deducting 10 percent of the amount of insurance coverage contained in the reserve account as of that date, provided that such adjustment shall not reduce the amount of insurance coverage in the reserve account to less than $50,000.

(2) No such annual adjustment to a lender's reserve account shall be made after the termination of the Secretary's authority to insure loans under Section 2 of Title I of the Act, or after the termination by the Secretary of a Title I insurance contract except pursuant to this paragraph.

(3) If within the five year period following the termination of an insurance contract the Secretary reinstates the insurance contract or issues a new insurance contract to the lender, the Secretary then shall make any annual adjustments to the lender's insurance coverage reserve account that would have occurred if such previous insurance contract had not been terminated. The amount of insurance coverage accruing thereafter under such a reinstated or new insurance contract shall be subject to the annual adjustment in insurance coverage prescribed by this paragraph.

(4) A sale, assignment or transfer by a lender of any loans held under a terminated but not reinstated insurance contract and a transfer by the Secretary of insurance coverage with respect to such loans shall comply with the applicable requirements of paragraphs (c) and (d) of this section.

(c) *Transfer of insured loans.* The lender shall not sell, assign or otherwise transfer any insured loan or loan reported for insurance to a transferee lender not approved to originate and purchase Title I loans under a valid Title I contract of insurance. Nothing contained herein shall be construed to prevent the pledging of such a loan as collateral security under a trust agreement, or otherwise, in connection with a bona fide loan transaction.

(d) *Transfer of insurance coverage.* Not more than $5,000 in insurance coverage shall be transferred to or from a lender's reserve account during any fiscal year (October 1 through September 30) without the prior approval of the Secretary. Except in cases involving the sale, assignment or transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, the Secretary shall transfer insurance coverage to or from a lender's reserve account to accompany the loan transfers reported by lenders under § 201.30.

(1) In all cases involving the sale, assignment or transfer of loans sold without recourse, guaranty, guarantee, or repurchase agreement, the Secretary shall transfer insurance coverage to the reserve account established for the transferee lender in an amount equal to 10 percent of the actual purchase price or the net unpaid principal balance, whichever is lesser, but not to exceed the amount of insurance coverage in the transferor lender's reserve account prior to the transfer. Insurance coverage shall be transferred without earmarking and shall be added to the existing amount of insurance coverage in the transferee lender's reserve account.

(2) In cases involving the transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, no insurance coverage will be transferred and no reports will be required.

(3) An existing insured property improvement loan or manufactured home loan may not be refinanced by a lender different from the originating or purchasing lender of record, unless the loan has been sold, assigned, or transferred to the new lender under paragraph (c) of this section and the Secretary has transferred insurance coverage for the loan under the applicable requirements of this paragraph.

(e) *Recovery shall not affect insurance coverage reserve account.* Amounts which may be recovered by the Secretary after payment of an insurance claim shall not be added to the amount of insurance coverage remaining in a lender's reserve account.

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33407, Sept. 3, 1987; 54 FR 10537, Mar.14, 1989]

Subpart E—Loan Administration

§ 201.40 Post-disbursement loan requirements.

(a) *Discovery of misstatements of fact.* If, after a loan has been made, the lender discovers any material misstatement of fact or that the loan proceeds have been misused by the borrower, dealer or any other party, it shall promptly report this to the Secretary. In such case, the insurance of the loan shall not be affected unless such material misstatement of fact or misuse of loan proceeds was caused by or was knowingly sanctioned by the lender or its employees (see § 201.31(e)(3)), provided that the validity of any lien on the property has not been impaired.

(b) *Requirements on property improvement loans.* (1) After receiving the proceeds of a direct property improvement loan, and after the work is completed to the borrower's satisfaction, the borrower shall submit a completion certificate to the lender, on a HUD-approved form and signed by the borrower and the contractor or seller, certifying under applicable criminal and civil penalties for fraud and misrepresentation that: (i) The improvements have been completed, (ii) the amount borrowed has been spent on improvements eligible under § 201.20(b) and in accordance with the

contract or cost estimate furnished to the lender prior to disbursement of the loan proceeds, and (iii) the borrower has not obtained and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of value in excess of $10 from the contractor or seller as an inducement for the consummation of the transaction. The borrower shall submit the completion certificate promptly upon the work's completion, but not later than six months after the disbursement of the loan proceeds, with one six-month extension if necessary.

(2) For all loan applications approved on or after the effective date of these regulations, the lender or its agent shall conduct an on-site inspection on any property improvement loan where the principal obligation is $7,500 or more, and on 10 percent of its property improvement loans where the principal obligation is less than $7,500. The inspection shall be conducted after receipt of the completion certificate. If no completion certificate is received for a property improvement loan, the lender or its agent shall conduct an inspection not later than 12 months after the disbursement of the loan proceeds. The purpose of the inspection is to verify the eligibility of the improvements and whether the work has otherwise been completed.

(Approved by the Office of Management and Budget under control number 2502-0328)

§ 201.41 Loan servicing.

(a) *Generally.* The lender shall service loans in accordance with accepted practices of prudent lending institutions. It shall have adequate facilities for contacting the borrower in the event of default, and shall otherwise exercise diligence in collecting the amount due. The lender shall remain responsible to the Secretary for proper collection efforts, even though actual loan servicing and collection may be performed by an agent of the lender. The lender shall have an organized means of identifying, on a periodic basis, the payment status of delinquent loans to enable collection personnel to initiate and follow-up on collection activities, and shall document its records to reflect its collection activities on delinquent loans.

(b) *Partial payments.* The lender shall accept any partial payment (inclusive of late charges) under an executed modification agreement or an acceptable repayment plan, and either apply it to the borrower's account or hold it in a trust account pending disposition. When partial payments held for disposition aggregate a full monthly installment, they shall be applied to the borrower's account, thus advancing the date of the oldest unpaid installment. If a partial payment is received more than 60 days after the date of default and was not submitted under a repayment plan or a modification agreement, the partial payment may be returned to the borrower, with a letter of explanation.

§ 201.42 Bankruptcy, insolvency or death of borrower.

(a) *Bankruptcy or insolvency.* The lender shall file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is involved in bankruptcy or insolvency proceedings, except that a proof of claim need not be filed if the court notifies the lender that the borrower has no assets and a proof of claim should not be filed. The notice of bankruptcy and a copy of the proof of claim (or the notice from the court that a proof of claim is not required) shall be retained in the loan file.

(b) *Death of a borrower.* The lender shall file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is deceased, unless the lender determines that there will not be a probate proceeding. A copy of the proof of claim (or documentation as to why a proof of claim was not filed) shall be retained in the loan file.

(c) *Responsibility of the lender after insurance claim is filed.* After the Secretary pays an insurance claim, the Secretary will notify the bankruptcy or probate court, as appropriate, that the loan has been assigned to the United States and will request substitution as the party to whom the claim is owed. Until the insurance claim is paid, the lender shall take all steps

necessary to protect the interests of the holder of the note in any bankruptcy or probate proceeding.

[54 FR 36266, Aug. 31, 1989]

§ 201.43 Administrative reports and examinations.

The Secretary may call upon a lender for any reports deemed necessary in connection with the regulations in this part and may inspect the loan files, records, books and accounts of the lender as they pertain to the loans reported for insurance.

Subpart F—Default Under the Loan Obligation

§ 201.50 Lender efforts to cure the default.

(a) *Personal contact with the borrower before acceleration and foreclosure or repossession.* The lender shall undertake foreclosure or repossession of the property securing a Title I loan that is in default only after the lender has timely serviced the loan with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Before taking action to accelerate the maturity of the loan in the event of default, the lender or its agent shall arrange for a face-to-face meeting with the borrower, or make a reasonable effort to do so, in order to assist the borrower—

(1) To cure the default by bringing the loan current immediately or by refinancing the loan, or

(2) To agree to a modification agreement or repayment plan for bringing the loan current by a later date.

If the lender is unable to arrange for a face-to-face meeting, the lender may discuss the default with the borrower by telephone and attempt to secure the borrower's agreement to curing the default, executing a modification agreement, or agreeing to an acceptable repayment plan. If the borrower cannot be located or indicates a refusal to meet or discuss the default, or refuses to consent to its cure or to a modification agreement or a repayment plan, the lender may proceed to take action under paragraphs (b) and (c) of this section. The lender shall document its actions, including placing in the file a copy of any modification agreement or any letter to the borrower reflecting an acceptable repayment plan.

(b) *Notice of default and acceleration.* Unless the borrower cures the default or agrees to a modification agreement or repayment plan, the lender shall provide the borrower with written notice that the loan is in default and that the loan maturity is to be accelerated. In addition to complying with applicable State or local notice requirements, the notice shall be sent by certified mail and shall contain:

(1) A description of the obligation or security interest held by the lender;

(2) A statement of the nature of the default and of the amount due to the lender as unpaid principal and earned interest on the note as of the date 30 days from the date of the notice;

(3) A demand upon the borrower either to cure the default (by bringing the loan current or by refinancing the loan) or to agree to a modification agreement or a repayment plan, by not later than the date 30 days from the date of the notice;

(4) A statement that if the borrower fails either to cure the default or to agree to a modification agreement or a repayment plan by the date 30 days from the date of the notice, then, as of the date 30 days from the date of the notice, the maturity of the loan is accelerated and full payment of all amounts due under the loan is required;

(5) A statement that if the default persists the lender will report the default to an appropriate credit reporting agency; and

(6) Any other requirements prescribed by the Secretary.

(c) *Reinstatement of the loan.* The lender may rescind the acceleration of maturity after full payment is due and reinstate the loan only if the borrower brings the loan current, executes a modification agreement, or agrees to an acceptable repayment plan.

(d) *Notice to credit reporting agency.* If the loan maturity is accelerated and the loan is not reinstated, the lender shall report the default to an appropriate credit reporting agency.

(Approved by the Office of Management and Budget under control number 2502-0328)

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33407, Sept. 3, 1987]

§ 201.51 Proceeding against the loan security.

(a) *Property improvement loans.* (1) After acceleration of maturity on a defaulted secured property improvement loan, the lender may either proceed against the loan security under its Title I security instrument or make claim under its contract of insurance. If the lender proceeds against the loan security, the lender may not submit an insurance claim.

(2) If a lender holds one or more mortgages or other security instruments senior to a secured property improvement loan, and the borrower defaults on both the senior security instrument and the property improvement loan, the lender may proceed against the secured property under the senior security instrument and later submit a claim under its title I contract of insurance only if:

(i) After acceleration of maturity on the defaulted loan, the lender obtains a HUD-approved appraisal of the property;

(ii) In proceeding against the secured property, the lender complies with all applicable State and local laws;

(iii) The lender takes all actions necessary to preserve its rights to obtain a valid and enforceable deficiency judgment; and

(iv) The lender calculates its claim for loss on the property improvement loan in accordance with § 201.55(a).

(3) After acceleration of maturity on a defaulted unsecured property improvement loan, the lender may submit a claim under its contract of insurance.

(b) *Manufactured home loans.* (1) When a manufactured home loan is in default, and the lender cannot contact the borrower during the notice period under § 201.50, the lender shall make a visual inspection of the property, determine whether the property is vacant or abandoned, and prepare a report on its condition for placement in the loan file. In any case of vacancy or abandonment, the lender shall take reasonable steps to preserve and maintain the property, including any items of removable personal property covered by the loan, if such action does not constitute trespass.

(2) After acceleration of maturity on a defaulted manufactured home loan, the lender shall proceed against the loan security by foreclosure or repossession, as appropriate, in compliance with all applicable State and local laws, and shall acquire good, marketable title to the property securing the loan. The lender shall also take all actions necessary under State and local law to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.

(3) The lender shall obtain a HUD-approved appraisal of the property, preferably on the site, as soon after repossession as possible or earlier with the permission of the borrower. This appraisal should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred, as listed in a current value rating publication accepted to the Secretary. Where the manufactured home is without hazard insurance and has sustained, at any time prior to the sale or disposition of the home, damage which would normally be covered by such insurance, the lender shall report this situation in submitting an insurance claim, and shall assure that the appraised value is based upon the retail value of comparable homes in good condition and in the same geographic area, without any deduction for such damage.

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[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989; 54 FR 36266, Aug. 31, 1989]

§ 201.52 Acquisition by voluntary conveyance or surrender.

The lender may accept a voluntary conveyance of title to or ownership of the property securing a manufactured home loan which is in default, provided that (a) the lender accepts the conveyance in full satisfaction of the bor-

rower's obligation, and (b) no claim is submitted under its contract of insurance. The lender may accept voluntary surrender of the property without satisfaction of the borrower's obligation, provided that if the lender intends thereafter to submit a claim under its contract of insurance, the lender shall acquire title to or ownership of the property and then dispose of and sell the property in compliance with State and local law, so as to assure that it can assign a valid and enforceable obligation, including any deficiency against the borrower, to the Secretary when submitting its claim.

§ 201.53 Disposition of manufactured home loan property.

Where the lender obtains title to property securing a manufactured home loan by repossession or foreclosure, the property shall be sold for the best price obtainable before making an insurance claim. In the case of a combination loan, the manufactured home and lot shall be sold in a single transaction and the manufactured home may not be removed from the lot, unless the prior approval of the Secretary is obtained for a different procedure. The best price obtainable shall be the greater of (a) the actual sales price of the property, less the cost of repairs to make the property marketable, or (b) the appraised value of the property before repairs (as determined by a HUD-approved appraisal), obtained under § 201.51(b)(3).

§ 201.54 Insurance claim procedure.

(a) *Claim application.* A claim for reimbursement for loss on any eligible loan shall be made on a HUD-approved form executed by a duly qualified officer of the lender under applicable criminal and civil penalties for fraud and misrepresentation. The insurance claim shall be fully documented and itemized, and shall be accompanied by the complete loan file pertaining to the transaction, including all documents and materials required to be retained in the file under this part. The loan file shall contain all documents required under this part, except that where State or local law requires retention of the original note, security instrument and any related documents, the lender may submit copie As appropriate, the claim applicatio shall be supported by the following:

(1) Documentation of the lender efforts to effect recourse against an dealer in accordance with any recours agreement under § 201.27(b) betwee the lender and the dealer and con tained in the loan documents;

(2) Certification under applicabl criminal and civil penalties for frau and misrepresentation that the lende has complied with all applicable Stat and local laws in carrying out any foreclosure or repossession, including copies of all notices served upon the borrower or published in connection with such foreclosure or repossession and

(3) Where a borrower has declared bankruptcy or insolvency, or is de ceased, the notice of bankruptcy, and evidence that the lender has filed a proof of claim with the court having jurisdiction.

(b) *Maximum claim period.* A claim shall be filed no later than the following dates:

(1) For property improvement loans—9 months after the date of de fault.

(2) For manufactured home pur chase loans—12 months after the date of default.

(3) For combination loans and manufactured home lot loans—18 months after the date of default.

(c) *Extension of the claim filing period.* Upon presentation of the facts of a particular case, the Secretary may extend the claim filing period. In computing the claim, no interest will be allowed for the period of the extension.

(d) *Assignment of lender's rights to the United States.* Upon the filing of the insurance claim, the lender shall assign its entire interest in the loan note (or in a judgment in lieu of the note), in any security held, and in any claim filed in probate, bankruptcy or insolvency proceedings, to the United States of America. The assignment shall be made in the form provided in paragraph (f) of this section, provided that if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable in the jurisdiction where the judgment or security was

taken shall be used. If the security interest has been assigned to the United States, the assignment shall be recorded in that jurisdiction prior to filing the insurance claim.

(e) *Valid and enforceable obligation when assigned.* The loan obligation evidenced by the note must be both valid and enforceable against the borrower at the time the note is assigned to the United States of America. Upon notification to the lender that for stated reasons the obligation may not be either valid or enforceable against the borrower, the Secretary may reassign the loan note to the lender and require the lender to obtain a valid and enforceable judgment against the borrower for the balance of the loan. If the Secretary has paid a claim and subsequently discovers that the obligation is not both valid and enforceable against the borrower, the Secretary may require the lender to repurchase the loan obligation and accept reassignment of the loan note. Upon obtaining an assignable judgment against a borrower, the lender may resubmit such a reassigned or repurchased note in a new insurance claim to the Secretary for payment.

(f) *Form of assignment.* A lender shall use the following form of assignment, or one generally acceptable in the jurisdiction involved, properly dated, to assign the lender's entire interest in a loan note, judgment, real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any security, in making an insurance claim:

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the loan qualifies for insurance) to the United States of America (HUD).

(Financial Institution) _____

By: _____

Title: _____

Date: _____

If the assignment does not appear on the note or other instrument that is assigned, it shall be duly executed on an allonge which is attached to such note or other instrument.

(g) *Denial of insurance claim.* The Secretary may deny a claim for insurance in whole or in part based upon a violation of these regulations, unless a waiver of compliance with the regulations is granted under § 201.5.

(h) *Incontestability of insurance claim payment.* Any insurance claim payment on a Title I loan shall be final and incontestable after two years from the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of the lender, unless a demand for repurchase of the loan obligation is made on behalf of the United States prior to the expiration of the two-year period.

(Approved by the Office of Management and Budget under control number 2502-0328)

[50 FR 43523, Oct. 25, 1985; 51 FR 5068, Feb. 11, 1986, as amended at 51 FR 32060, Sept. 9, 1986; 52 FR 33407, Sept. 3, 1987]

§ 201.55 Calculation of insurance claim payment.

The lender will be reimbursed in an amount not to exceed 90 percent of its loss on any eligible loan up to the amount of insurance coverage in the lender's insurance coverage reserve account established by the Secretary under § 201.32, if the insurance claim is made in accordance with the requirements of this part. The amount of the insurance claim payment shall be computed as follows:

(a) *Property improvement loans.* For property improvement loan insurance claims certified for payment on or after the effective date of these regulations, the insurance claim payment shall be 90 percent of the sum of the following amounts:

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the terms of the note executed for any loan application that is approved prior to the effective date of these regulations, and calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations). Where the lender has proceeded against the secured property under § 201.51(a)(2), the unpaid amount of the loan obligation shall be reduced by the greater of:

(i) The amount by which any proceeds from the property's sale or disposition exceed the balance(s) due on any obligation(s) senior to the Title I loan obligation; or

(ii) The amount by which the property appraisal exceeds the balance(s) due on any obligation(s) senior to the Title I loan obligation.

(2) The unpaid amount of interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

(3) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.

(4) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed $500.

(5) The amount of expenses for recording the assignment of the security to the United States.

(b) *Manufactured home loans.* For manufactured home loan insurance claims certified for payment on or after the effective date of these regulations, the insurance claim payment shall be 90 percent of the sum of the following amounts:

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the actuarial method), after deducting the following amounts:

(i) The best price obtainable for the property after lawful repossession or foreclosure, as determined in accordance with § 201.5?

(ii) All amounts to which the lender is entitled after the date of default from any source relating to the property, including but not limited to such items as rent, other income, recourse recovery against the dealer, hazard insurance benefits, secured interest protection insurance benefits, and rebates on prepaid insurance premiums; and

(iii) Amounts retained by the lender after the date of default, including amounts held or deposited to the account of the borrower or to which the lender is entitled under the loan tra action, and which have not been a plied in reduction of the borrower's i debtedness.

(2) The unpaid amount of intere on the unpaid amount of the loan ob gation from the date of default to th date of the claim's initial submissio for payment plus 15 calendar days, ca culated at the rate of seven percen per annum. In the case of a manufa tured home purchase loan, interes shall not be paid for any period grea er than nine months from the date o default, unless within such period th lender in writing requests an extensio not to exceed an additional thre months, and the Secretary finds goo cause for granting such extension. In terest shall not be paid for any perio greater than 18 months in the case o a combination loan or a manufactured home lot loan.

(3) For manufactured home pur chase loans, the amount of costs paid to a dealer or other third party to re possess and preserve the manufac tured home and other property secur ing repayment of the loan (including payment of hazard insurance premi ums, personal property taxes and site rental, where appropriate), plus actual costs not to exceed $600 per module of removing and transporting the home to a dealer's lot or other off-site loca tion.

(4) The amount of a sales commission paid to a dealer, real estate agent or other third party for the resale of the repossessed or foreclosed manufactured home and/or lot. Where the home is resold on-site, the commission shall not exceed 10 percent of the sales price. Where the home is resold off-site, the commission shall not exceed seven percent of the sales price.

(5) For manufactured home lot loans, and for combination loans where both the foreclosed manufactured home and lot are classified as realty, the amount of:

(i) State or local real estate taxes, ground rents, and municipal water and sewer fees or liens, prorated to the date of disposition of the property;

(ii) Special assessments which are noted on the loan application or which become liens after the insurance is

issued, prorated to the date of disposition of the property;

(iii) Premiums for hazard insurance on the manufactured home, prorated to the date of disposition of the property; and

(iv) Transfer taxes imposed upon any deeds or other instruments by which the property was acquired by the lender.

(6) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.

(7) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exeed $500.

(8) The amount of expenses for recording the assignment of the security to the United States, and for costs of repossession or foreclosure other than attorney's fees and those incurred under paragraph (b)(3), but not to exceed costs which are customary and reasonable in the jurisdiction where the repossession or foreclosure takes place, as determined by the Secretary.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989; 54 FR 36266, Aug. 31, 1989]

PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

Sec.
202.1 Purpose.
202.2 Approval of lending institutions.
202.3 Eligible lenders.
202.4 Approval requirements.
202.5 Termination of insurance contract.
202.6 Administrative actions.

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Title I, sec. 2, National Housing Act, 12 U.S.C. 1703.

SOURCE: 49 FR 24991, June 19, 1984, unless otherwise noted.

§ 202.1 Purpose.

The purpose of this part is to establish uniform standards for the approval or disapproval of lending institutions which apply for or hold Contracts of Insurance under Title I of the National Housing Act and HUD regulations at 24 CFR Part 201.

§ 202.2 Approval of lending institutions.

A lender may be approved for participation in the programs under Title I of the National Housing Act upon filing a request for approval on a form prescribed by the Secretary. The granting of an insurance contract by the Secretary shall constitute an agreement between the lender and the Secretary which shall govern the lender's continued approval subject to the provisions of this part.

(Approved by the Office of Management and Budget under control number 2502-0017)

§ 202.3 Eligible lenders.

The following types of chartered institutions, permanent organizations having succession, or trusts, are eligible for approval:

(a) *Government Institutions and National Mortgage Associations.* A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, and a National Mortgage Association which is empowered to participate in a consumer installment lending operation;

(b) *Supervised institutions.* A member of the Federal Reserve System, a lender whose accounts are insured by the Federal Savings and Loan Insurance Corporation (FSLIC), the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA), or an institution which is subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of its books and accounts;

(c) *Nonsupervised institutions.* An institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes or similar advances of credit, or the purchase of consumer installment contracts, and which is not required by law to be subject to the periodic inspection and supervision of a governmental agency.

§ 202.4 Approval requirements.

(a) An eligible lender shall establish to the satisfaction of the Secretary that it meets and will continue to meet the following general requirements:

(1) It shall employ trained personnel competent to perform their assigned responsibilities in consumer lending

activities and shall have adequate staff and facilities to originate and service Title I loans;

(2) It shall comply with Title VIII of the Civil Rights Act of 1968, Executive Order 11063, the Equal Credit Opportunity Act, and other Federal laws relating to consumer lending activities;

(3) It shall provide prompt notification, on a form prescribed by the Secretary, of all corporate changes, including, but not limited to: mergers, terminations, name, location, control, ownership, and character of business;

(4) It shall ensure that all employees who will sign applications for insurance on behalf of the lender shall be corporate officers or will otherwise be authorized to bind the lender in matters involving the origination of Title I loans;

(5) It shall not use escrow funds for any purpose other than that for which they were received;

(6) It shall file a yearly verification report on a form prescribed by the Secretary;

(7) Is shall, upon request, submit a copy of its latest financial statement or such other information as the Secretary may request, and submit to an examination of that portion of its records which relates to its Title I lending activities;

(8) It shall remain responsible to the Secretary for the actions of its lending and servicing branches;

(9) Except for those eligible lenders described in § 202.3(a), it shall pay an application and an annual fee, including additional fees for each branch office authorized to originate and report loans for insurance registration, in such amount as the Secretary may require to assist in defraying the cost of approving and supervising lenders for participation in the Title I Program;

(10) Neither the applicant lender nor any officer, director, principal or employee of the applicant lender shall:

(i) Be under suspension, debarment, or other restrictions, under Part 24 or Part 25 of this title or under similar procedures of any other Federal agency, or

(ii) Be or become indicted for, or convicted of, an offense which adversely affects the lender's integrity or its ability to participate in HUD programs as an approved lender.

(b) In addition to the general requirements applicable to all eligible lenders under paragraph (a) of this section, a supervised institution shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency. Supervised institutions that are not members of the Federal Reserve System or whose accounts are not insured by the FSLIC, FDIC, or NCUA shall have and maintain a net worth of not less than $100,000 in assets acceptable to the Secretary.

(c) In addition to the general requirements applicable to all eligible lenders under paragraph (a) of this section, a nonsupervised institution shall:

(1) Have and maintain a net worth of not less than $100,000 in assets acceptable to the Secretary;

(2) Have and maintain a reliable warehouse line of credit or other funding program acceptable to the Secretary in an amount of not less than $250,000 for use in Title I loan financing;

(3) Within 75 days of the close of its fiscal year, and at such other times as may be requested, file with the Secretary an audit report and financial statements in a form acceptable to the Secretary consisting of a balance sheet, a statement of operations and retained earnings, an analysis of the lender's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds, based on an audit performed by a Certified Public Accountant or by a qualified Independent Public Accountant (as defined by the Comptroller General of the United States) licensed by a State or other political subdivision of the United States.

(Approved by the Office of Management and Budget under control number 2502-0017)

§ 202.5 Termination of insurance contract.

(a) *Notice.* A Contract of Insurance may be terminated in accordance with its terms by the Secretary or by the Secretary's designee upon giving the

lender at least 5 days prior written notice.

(b) *Informal meeting.* If requested, a lender shall be entitled to an informal meeting with the Department official taking the action to terminate its Contract of Insurance before the expiration of the 5-day notice period.

(c) *Effects of termination.* Termination of a Contract of Insurance shall not affect:

(1) The Department's obligation to provide insurance coverage with respect to eligible loans originated before the termination, absent fraud or misrepresentation;

(2) A lender's obligation to continue to pay insurance premiums and meet all other obligations associated with eligible loans originated before termination; or

(3) A lender's right to apply for and be granted a new Contract of Insurance provided that the requirements for approval at § 202.4 are met.

§ 202.6 Administrative actions.

(a) *General.* Administrative actions may be applied to a lender participating in the Title I program and may include one or more of the following:

(1) A letter of reprimand informing the lender of the existence or occurrence of a violation of any requirement of this part or Part 201 of this title and directing the lender to bring and maintain its activities into conformity with all HUD requirements. Failure to comply with a directive in a letter of reprimand may result in other actions as set forth in this section;

(2) Probation for a specified period of time, for the purpose of evaluating the lender's compliance with HUD requirements. During a period of probation, additional requirements may be imposed on the lender as an aid in evaluating the lender. Such additional requirements may include supervision of the lender's activities by HUD, periodic reporting to HUD, or submission to HUD of internal audits, audits by an Independent Public Accountant, or other reviews;

(3) Suspension, which is based on adequate evidence that: (i) One of the grounds for an administrative action contained in paragraph (b) of this section exists and (ii) that continuation of approval pending completion of any audit, investigation, or other review, or pending such administrative or legal proceedings as may ensue, would not be in the public interest or in the best interest of the Department. During the period of suspension, a lender may not originate new Title I loans under its Title I Contract of Insurance or apply for a new Contract of Insurance;

(4) Withdrawal of approval of a lender to enter into a Contract of Insurance. Such withdrawal shall be for a specified period of time or, in cases involving egregious circumstances, for an indefinite period.

(b) *Grounds for administrative actions.* Administrative actions shall be based upon one or more of the following grounds:

(1) Failure to remain in compliance with the requirements for approval of lenders at 24 CFR 202.4;

(2) Submission of false information to HUD in connection with a loan;

(3) Failure properly to supervise and monitor dealers under the provisions of 24 CFR Part 201;

(4) Exhaustion of the general insurance reserve established under 24 CFR Part 201;

(5) Maintenance of a claims/loan ratio representing an unacceptable risk to the Department;

(6) Failure to cooperate with an audit, investigation or request by the Department's Office of Inspector General or with an inquiry by HUD into the conduct of the lender's HUD-insured business or any other failure to provide required information to HUD concerning the conduct of the lender's HUD-insured business;

(7) Transfer of a Title I loan to a party who does not have a valid Contract of Insurance, or

(8) Such other reason as the Mortgagee Review Board, Secretary, Under Secretary or Hearing Officer, as appropriate, determines to be justified. Such reasons include, but are not limited to: Failure to exercise prudent credit judgment; failure to observe proper business practices; failure to observe proper loan origination servicing procedures; failure to comply with HUD requirements or other requirements of law or regulation.

(c) *Notice, hearings and hearing requests.* In the case of a probation, suspension or withdrawal action, a lender is entitled to notice and to request a hearing before a Hearing Officer to challenge the action, in accordance with the procedures in 24 CFR 25.5(d)(4), 25.7 and 25.8. Hearings to challenge a probation, suspension or withdrawal action shall be conducted in accordance with the applicable rules of Part 26 of this Title.

(d) *Settlement Agreements.* The Department may at any time enter into a settlement agreement with a lender to resolve any outstanding grounds for any action provided for by this section. Such agreements may provide, among other requirements, for: cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the lender by a borrower or by HUD; actions to collect sums of money wrongfully or incorrectly paid by the lender to a third party; indemnification of HUD for insurance claims on Title I loans originated in violation of HUD requirements; or implementation of a Quality Control Plan or other corrective measures acceptable to HUD. Failure of a lender to comply with a settlement agreement may result in suspension or withdrawal of HUD approval.

PART 202a—TITLE I MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

Sec.

202a.251 Cross-reference.
202a.255 Due date of initial MIP.
202a.260 Adjustment of initial MIP.
202a.265 Amount of MIP.
202a.270 Pro rata adjustment of MIP upon prepayment.
202a.275 Maturity of debentures.

AUTHORITY: Sec. 2, 48 Stat. 1246, as amended; sec. 8, 64 Stat. 48, as amended; 12 U.S.C. 1703, 1706c.

SOURCE: 36 FR 24507, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

§ 202a.251 Cross-reference.

(a) All of the provisions of Subpart B Part 203 of this chapter covering mortgages insured under section 203 of the Act apply to mortgages covering individual homes in connection with Title 1 mortgage insurance under title I, section 8 of the Act, except:

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203.259a Scope.
203.260 Amount of Mortgage Insurance Premium (MIP).
203.262 Due date of MIP.
203.263 Adjustment of initial MIP.
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203.280 One-time MIP.
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203.282 Mortgagee's late charge and Interest.
203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to title I, section 8 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24507, Dec. 22, 1971, as amended at 47 FR 30754, July 15, 1982; 48 FR 28807, June 23, 1983]

§ 202a.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 202a.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second premium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 202a.265 Amount of MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid as provided in §§ 203.264 and 203.265 of this chapter. The MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

[47 FR 30754, July 15, 1982]

§ 202a.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 202a.275 Maturity of debentures.

Debentures shall mature 3 years after the first day of July following the maturity date of the mortgage.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

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Approval of Mortgagees

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203.1 Approval of mortgagees.
203.2 Approval requirements.
203.3 Supervised mortgagees.
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AUTHORITY: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

SOURCE: 36 FR 24508, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

APPROVAL OF MORTGAGEES

§ 203.1 Approval of mortgagees.

(a) *General.* (1) A mortgagee may be approved for participation in the HUD/FHA mortgage insurance programs upon filing a request for approval on a form prescribed by the Commissioner. Approval of the application shall constitute an agreement between the mortgagee and the Commissioner which shall govern the mortgagee's continued approval subject to the provisions of this part.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs, and to geographic areas designated by the Commissioner.

(3) Separate approval is required under the National Housing Act for participation in the Title I Program, and additional approval is required for participation in the Title II Direct Endorsement Program or for each of the Coinsurance Programs.

(b) *Prohibited payments.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other compensation from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that compensation as may be approved by the Commissioner may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(c) *Withdrawal of approval.* Mortgagee approval may be withdrawn by the Mortgagee Review Board as provided in Part 25 of this title. Withdrawal of a mortgagee's approval shall not affect the insurance on mortgages already accepted for insurance.

(Approved by the Office of Management and Budget under control number 2502-0005)

[52 FR 3609, Feb. 5, 1987]

§ 203.2 Approval requirements.

To be approved for participation in the HUD-FHA mortgage insurance programs, and to maintain approval, a mortgagee shall meet the following general requirements and the specific requirements of § 203.3 through § 203.7, as appropriate.

(a) It shall be a chartered institution, a permanent organization having succession, or a trust. A limited partnership will be considered a permanent organization having succession for purposes of this section if the partnership has not more than one general partner and the general partner is a chartered institution that has as its principal activity the management of the partnership affairs. If these conditions are met, the requirements of paragraphs (b) and (c) of this section shall be treated as applicable to the general partner.

(b) It employs trained personnel competent to perform their assigned responsibilities, including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with this part, to the extent the mortgagee engages in such activities.

(c) All employees who will sign applications for mortgage insurance on behalf of the mortgagee shall be corporate officers or shall otherwise be authorized to bind the mortgagee in matters involving the origination of mortgage loans.

(d) It shall not use escrow funds for any purpose other than that for which they were received.

(e) It shall comply with the provisions of Title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974 and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(f) It shall comply with the servicing responsibilities contained in Subpart C of this part, with all other applicable regulations contained in this title and with such additional conditions and requirements as the Commissioner may impose.

(g) It shall provide prompt notification, on a form prescribed by the Commissioner, of all changes in its legal structure, including, but not limited to mergers, terminations, name, location, control of ownership, and character of business.

(h) It shall file a yearly verification report on a form prescribed by the Commissioner.

(i) It shall, upon request, submit a copy of its latest financial statement, submit such information as the Commissioner may request, and submit to an examination of that portion of its records which relates to its insured mortgage activities.

(j) It shall implement a written Quality Control Plan that assures compliance with the regulations and other issuances of the Commissioner regarding loan origination and servicing.

(k) A mortgagee, other than one meeting the requirements of § 203.7, shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for mortgage insurance, in such amounts and at such times as the Commissioner may require.

(l) At the time of application, neither the applicant mortgagee nor any officer, partner, director, principal or employee of the applicant mortgagee shall:

(1) Be suspended, debarred or otherwise restricted under Part 24 or Part 25 of this title or under similar procedures of any other Federal agency.

(2) Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability of the mortgagee to participate in HUD programs as an approved mortgagee.

(3) Be subject to unresolved findings as a result of HUD or other governmental audits or investigations.

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(Approved by the Office of Management and Budget under control number 2502-0005)

[52 FR 3609, Feb. 5, 1987]

§ 203.3 Supervised mortgagees.

(a) A supervised mortgagee may submit applications for mortgage insurance and may purchase, hold, service and sell insured mortgages.

(b) An institution may be approved as a supervised mortgagee on application to the Commissioner if it is either:

(1) A member of the Federal Reserve System or an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration and that meets the requirements of § 203.2; or,

(2) An institution subject to the inspection and supervision of a governmental agency that is required by law or applicable regulation to make periodic examinations of its books and accounts, provided the institution meets the requirements of § 203.2 and the following additional requirements:

(i) It shall promptly notify the Commissioner in the event of termination of its supervision by its supervising agency.

(ii) It shall have and maintain a net worth or a trust estate as provided in § 203.4(b)(1).

(c) A supervised mortgagee may, on application to the Commissioner, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Commissioner for the actions of its branch offices.

(d) A supervised mortgagee may, with the approval of the Commissioner, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

(e) Approval of a banking institution or a trust company as a supervised mortgagee shall constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

[52 FR 3610, Feb. 5, 1987]

§ 203.4 Nonsupervised mortgagees.

(a) A nonsupervised mortgagee is an institution that has as its principal activity the lending or investment of funds in real estate mortgages, but does not meet the requirements of a supervised mortgagee as provided in §203.3. A nonsupervised mortgagee may submit applications for the insurance of mortgages and may purchase, hold, service and sell insured mortgages.

(b) A mortgagee may be approved as a nonsupervised mortgagee if it meets the approval requirements of § 203.2 and the following special requirements:

(1) It shall have and maintain a net worth or a trust estate of not less than $100,000 in assets acceptable to the Commissioner.

(2) It shall have and maintain a reliable warehouse line of credit in an amount of not less than $250,000, available for use in the origination of mortgages or other mortgage funding programs acceptable to the Commissioner.

(3) It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under insured mortgages on account of ground rents, taxes, assessments, and insurance premiums, and shall deposit such funds in a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration.

(4) It shall file an audit report with the Commissioner within 90 days of the close of its fiscal year (or within an extended time if an extension is granted in the sole discretion of the Commissioner), and at such other times as may be requested. Audit reports shall be based on audits performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Commissioner, including a balance sheet and a statement of operations and retained earnings, and analysis of the mortgagee's net worth, adjusted to reflect only assets acceptable to the Commissioner, and an analysis of escrow funds.

(ii) A report on compliance tests prescribed by the Commissioner.

(iii) Such other information as the Commissioner may require.

(c) A nonsupervised mortgagee that originates 100 or fewer FHA-insured single family mortgages annually shall be exempt from the provisions of § 203.4(b)(4)(ii), if it files with the Commissioner, within 90 days of the close of its fiscal year, a certification by a senior official of the mortgagee that it did not originate more than 100 FHA-insured single family mortgages during its fiscal year, and a Management Letter prepared by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, which conforms with generally accepted auditing standards and which includes senior management's response to the Management Letter.

(d) A nonsupervised mortgagee may, on application to the Commissioner, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Commissioner for the actions of its branch offices.

(Approved by the Office of Management and Budget under control number 2502-0005)

[52 FR 3610, Feb. 5, 1987]

§ 203.5 Loan correspondents.

(a) A loan correspondent is an institution that originates and closes HUD/FHA insured mortgage loans for sale to its sponsor or sponsors. Except for the Direct Endorsement program authorized in §§ 200.163 through 200.164a of this chapter, it must process and close all loans in its own name. A loan correspondent may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Commissioner, nor may it retain insured mortgages in its own portfolio. In connection with the Direct Endorsement program, a loan correspondent may not underwrite, but shall close in its own name, all loans for submission to HUD/FHA for insurance endorsement. Underwriting of Direct Endorsement loans shall be the responsibility of the loan correspondent's sponsor.

(b) A mortgagee may be approved as a loan correspondent if it meets the approval requirements of § 203.4, except that:

(1) Its approval must be requested by one or more sponsors that are HUD/FHA approved mortgagees under § 203.3, § 203.4, or § 203.7.

(2) It shall be exempt from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(3) It shall have and maintain an adjusted net worth or trust estate of not less than $25,000 in assets acceptable to the Commissioner. Previously approved loan correspondents that have a net worth of less than $25,000 must meet this $25,000 net worth requirement on or before March 1, 1988.

(4) It may not, as authorized in § 203.4(d), maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment without the prior approval of the Commissioner. Approval may be granted where the loan correspondent meets and maintains an additional $25,000 net worth requirement for each branch office it maintains until it has reached an adjusted net worth of not less than $100,000. Loan correspondents with an adjusted net worth of $100,000 or more may, with the prior approval of the Commissioner, open and maintain branch offices without meeting any additional net worth requirement. A loan correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(5) A loan correspondent and its sponsor or sponsors shall promptly notify the Commissioner upon termination of any loan correspondent agreement, and termination of its agreements with all its sponsors shall be cause for withdrawal of the loan correspondent's approval.

[52 FR 3611, Feb. 5, 1987]

§ 203.6 Investing mortgagees.

(a) An investing mortgagee is an organization, including a charitable or nonprofit institution, pension fund or trust, that is not approved under other sections of this part. It may purchase, hold and sell insured mortgages but may not submit applications for the insurance of mortgages. An investing mortgagee may not service insured mortgages without prior approval of the Commissioner.

(b) An organization may be approved as an investing mortgagee if it meets the approval requirements of § 203.2, and the following special requirements:

(1) It has lawful authority to purchase insured mortgages in its own name.

(2) It has or has arranged for funds sufficient to support a projected investment in real estate mortgages of at least $1 million.

(3) It will provide, or will arrange for, the servicing of all mortgages it acquires.

[52 FR 3611, Feb. 5, 1987]

§ 203.7 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.

(a) A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank or a National Mortgage Association which meets the approval requirements of § 203.2 and is empowered to hold mortgages insured under the National Housing Act may be approved as an FHA mortgagee and may originate, purchase, hold, service and sell insured mortgages to the extent authorized by applicable Federal, State or local law.

(b) Under such terms and conditions as the Commissioner may prescribe, Public Housing Agencies or their instrumentalities may be approved as mortgagees for the purpose of originating and holding insured project mortgages funded by issuance of tax exempt obligations by the agency, if the housing project will be assisted under section 8 of the United States Housing Act of 1937.

(c) Under such terms and conditions as the Commissioner may prescribe, State Housing Agencies as defined in section 244(f) of the National Act may be approved as mortgagees for the purpose of originating and holding coinsured project mortgages pursuant to section 244 of that Act.

(d) A mortgagee approved under paragraph (a), (b) or (c) of this section may, with the approval of the Commissioner, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in the mortgagee's name and on its behalf.

(e) Since the insuring of mortgage notes or other evidence of indebtedness under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in 24 CFR Part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

[52 FR 3611, Feb. 5, 1987; 52 FR 9295, Mar. 24, 1987]

§§ 203.8—203.9 [Reserved]

APPLICATION AND COMMITMENT

§ 203.10 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage about to be executed, or of a mortgage already executed.

§ 203.11 Form of application.

The application must be made upon a standard form prescribed by the Commissioner.

§ 203.12 Mortgage insurance on proposed or new construction in a new subdivision or improved area.

(a) *Applicability.* This section applies to all applications for insurance of mortgages on one- to four-family dwellings constructed in a new subdivision or improved area (both as defined in paragraph (b)), except an application for insurance of a mortgage on a dwelling which:

(1) Was completed more than one year before the date of the application

for mortgage insurance (or, under the Direct Endorsement Program, was completed more than one year before the date of the appraisal), or

(2) Is located in a subdivision in which all development construction has been completed and accepted by the local jurisdiction and most dwellings have been completed, or

(3) Is being sold to a second or subsequent purchaser.

(b) *Definitions.* For purposes of this section:

(1) "Subdivision" means the total area containing all of the proposed land development activities, building or construction operations which are under centralized control, and planned principal development elements to support the creation of 25 or more dwelling lots (or such lesser number of lots as HUD shall determine to be appropriate to require applicability of this section in individual cases).

(2) "Improved area" means an area of at least the minimum size in which the local government is willing to accept the streets, or the water and sewage systems for maintenance, as appropriate. In the absence of local approval procedures, the term means an area of such size as HUD is willing to process.

(3) "Partially completed", with respect to an improved area, means that:

(i) The local government has accepted the plat of a subdivision or of an improved area, and the plan for its principal development elements and rights-of way;

(ii) All government approvals to begin development and construction in the improved area have been secured;

(iii) The development or construction of the improved area's streets, water and sewage systems and utilities has proceeded to a point that precludes any major changes; and

(iv) Provisions are in place for continuous maintenance of the streets and water and sewage systems once the improved area is substantially completed.

(4) "Substantially completed", with respect to an improved area, means that:

(i) With the exception of delays approved by the local government and HUD, the improved area's principal development elements have been completed;

(ii) The local government has issued occupancy permits or their equivalent on those new dwellings being processed by HUD for mortgage insurance; and

(iii) The local government does or will accept for continous maintenance the streets, water and sewage systems. Where local acceptance for maintenance is not available, adequate provision for private maintenance must be demonstrated. However, with respect to private water and sewer systems, the local government must also certify that public systems are economically infeasible, or that the property is served by a system approved by the Commissioner under Title X of the National Housing Act.

(5) "Principal development elements" include without being limited to, necessary grading, streets, water and sewage systems, utilities, storm drainage, and community facilities, as well as measures and devices for the abatement of nuisances and hazards.

(c) *Procedures.* Applications for insurance to which this section applies shall be processed in accordance with procedures consistent with this section, or in accordance with such instructions prescribed under the Direct Endorsement Program as the Commissioner may prescribe. Such procedures may provide for endorsement for insurance.

(1) Of a mortgage covering a dwelling located in an improved area in accordance with terms of a commitment issued as described in paragraph (d);

(2) Of a mortgage covering a dwelling located in a subdivision to which paragraph (e) is applicable, in accordance with the terms of a commitment issued as described in paragraph (e);

(3) Of a mortgage covering a dwelling located in a subdivision found acceptable under paragraph (f), in accordance with the terms of a commitment issued as described in paragraph (f).

(d) *Improved areas.* A commitment to insure a mortgage on a dwelling located in an improved area may be issued (or the dwelling appraised for insurance under the Direct Endorsement Program) when:

(1) The improved area is at least partially completed;

(2) There is vehicular access to the finished lot at least to a line beyond the subject site(s), and the lot and block grading are sufficiently finished to permit the appraiser to analyze the influence of adjacent areas on the subject site(s); and

(3) Compliance with applicable HUD and local requirements can be demonstrated. The commitment issued (or Direct Endoresement Program instructions prescribed) with respect to a dwelling located in an improved area appraised in accordance with this paragraph shall require that the improved area be at least substantially completed before endorsement for insurance.

(e) *Local area certification.* The Commissioner may prescribe procedures for certifying the capacity of a local jurisdiction to maintain and enforce acceptable environmental, underwriting and development standards and procedures for the analysis and approval of subdivisions and their principal development elements. A subdivision which is or will be approved by a certified jurisdiction shall not be reviewed by HUD under paragraph (f) of this section, except with regard to elements for which HUD may have conditioned the certification of the jurisdiction. Commitments for insurance of mortgages covering dwellings located in a subdivision to which this paragraph (e) applies may be issue before, during, or after subdivision development.

(f) *Subdivision analysis.* The Commissioner shall prescribe procedures for analysis of proposed or new subdivisions by HUD for compliance with applicable HUD and local development, underwriting and environmental standards. Such analysis may be conduced (and commitments for insurance of mortgages covering dwelling located in subdivision found acceptable under such procedures may be issued) before, during, or after subdivision development. Such procedures also shall provide for acceptance by HUD, on a fully reciprocal basis, of subdivision approvals issued by the Department of Veterans Affairs and Farmers Home Adminstration.

(g) *Processing fee.* The developer of a subdivision shall pay a nonrefundable fee to cover the costs of processing. The fee shall be paid at the time of filing the Application for Environmental Review. The amount of the fee shall be set by, and may from time to time be changed by, notice published in the FEDERAL REGISTER. Any subsequent application involving additional lots must be accompanied by an additional fee payment. In the event the application is incomplete on its face, or is otherwise not acceptable for processing, payment will be returned with the application.

(Approved by the Office of Management and Budget under control number 2502-0327)

[50 FR 20097, May 14, 1985, as amended at 54 FR 39525, Sept. 27, 1989]

§ 203.13 Approval of application.

(a) Upon approval of an application, acceptance of the mortgage for insurance will, except as provided in paragraph (b) of this section, be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Secretary, the terms and conditions upon which the mortgage will be insured.

(b) Except as set forth in §§ 200.163(b) and 200.164(g), commitments are not issued by HUD under the single family program of Direct Endorsement—which may be utilized only by those sections of the National Housing Act specified in § 200.163. Under this program the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163, and, if the documents are acceptable, the loan is endorsed.

[48 FR 11940, Mar. 22, 1983]

§ 203.14 Builders warranty.

With respect to commitments issued on or after October 1, 1954, applications relating to proposed construction must be accompanied by an agreement in form satisfactory to the Commissioner executed by the seller or builder or such other person as the Commissioner may require agreeing that in the event of any sale or conveyance of

the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property a warranty in form satisfactory to the Commissioner warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Commissioner) on which the Commissioner has based his valuation of the dwelling. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Commissioner with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

§ 203.15 Certification of appraisal amount.

An application with respect to insurance of mortgages on one- or two-family dwellings must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling the said person will deliver to the purchaser of such property a written statement in form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

§ 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes.

Every application filed with respect to insurance of mortgages on a two-, three-, or four-family dwelling, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same mortgagor, must be accompanied by a contract in form satisfactory to the Commissioner, signed by the proposed mortgagor covenanting and agreeing that so long as the proposed mortgage is insured by the Commissioner the mortgagor will not rent the housing or any part thereof covered by the mortgage for transient or hotel purposes, together with the mortgagor's certification under oath that the housing or any part thereof covered by the proposed mortgage will not be rented for transient or hotel purposes. For the purpose of this subchapter rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days or (b) any rental if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

§ 203.16a Mortgagor and mortgagee requirement for maintaining flood insurance coverage.

(a) If the mortgage is to cover property that: (1) Is located in an area designated by the Secretary as a flood plain area having special flood hazards or (2) is otherwise determined by the Commissioner to be subject to a flood hazard; and if flood insurance under the National Flood Insurance Program (NFIP) is available with respect to such property, the mortgagor and mortgagee shall be obligated, by a special condition to be included in the mortgage insurance commitment, to obtain and to maintain NFIP flood insurance coverage on the property during such time as the mortgage is insured. The flood insurance to be maintained shall be in an amount at least equal to either the outstanding balance of the mortgage, less estimated land costs, or the maximum amount of NFIP insurance available with respect to the property, whichever is less.

(b) No mortgage shall be insured which covers property located in an area that has been identified by the Secretary as an area having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program, and such insurance is obtained by the mortgagor. Such requirement for flood insurance shall be effective July 1, 1975, or one year after the date of notification by the Secre-

tary to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards, whichever is later. The amount of flood insurance required need not exceed the principal balance of the mortgage, less estimated land costs, and need not be required beyond the term of the mortgage.

[41 FR 11484, Mar. 19, 1976]

ELIGIBLE MORTGAGES

§ 203.17 Mortgage provisions.

(a) *Mortgage form.* (1) The term "mortgage" as used in this part, except § 203.43c, means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed" or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

(2)(i) The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner (A) shall require specific language in the mortgage which shall be uniform for every mortgage, and (B) may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. (ii) Each mortgage shall also contian any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

(b) *Mortgage multiples.* A mortgage to which any part of a one-time mortgage insurance premium payable pursuant to § 203.280 is added shall involve a principal obligation in multiples of $1. Any other mortgage shall involve a principal obligation in multiples of $50.

(c) *Payments.* The mortgage shall:

(1) Come due on the first of the month.

(2) Contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

(3) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

(d) *Maturity.* The mortgage shall have a term of not more than 30 years from the date of the beginning of amortization, except that the mortgage may have a term not in excess of 35 years from the date of the beginning of amortization if the following requirements are met:

(1) The mortgagor is an owner-occupant of the property and is not able as determined by the Secretary, to make the required payments under a mortgage having a shorter amortization period; and

(2) The dwelling was approved for mortgage insurance by the Secretary prior to the beginning of construction or approved for guaranty, insurance or direct loan by the Secretary of Veterans Affairs prior to such construction.

(e) *Property Standards.* The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

(f) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

[36 FR 24508, Dec. 22, 1971, as amended at 45 FR 29278, May 2, 1980; 48 FR 28804, June 23, 1983; 49 FR 21319, May 21, 1984; 53 FR 34281, Sept. 6, 1988; 54 FR 39525, Sept. 27, 1989]

§ 203.18 Maximum mortgage amounts

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is an occupant of the property shall not exceed the lesser of the amounts in paragraphs (a)(1) and (2) or (a)(1) and (3) of this section as follows:

(1) *Dollar limitation.* A dollar limitation of:

(i) $67,500 for a one-family residence.

(ii) $76,000 for a two-family residence.

(iii) $92,000 for a three-family residence.

(iv) $107,000 for a four-family residence.

(2) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply:

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the property exceeds $50,000. the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran (see paragraph (b) of this section), the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

(b) *Veteran qualifications.* The special veteran terms provided in paragraph (a) of this section shall only be applicable to a mortgage covering a single family dwelling executed by a mortgagor who submits to the Commissioner one of the following certifications:

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days; or

(2) A Certificate of Eligibility from the Department of Veterans Affairs establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD-214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Department of Veterans Affairs establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had not previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months of continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(2) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Department of Veterans Affairs has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) Was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification).

(c) *Nonoccupant mortgagors.* A nonoccupant mortgagor may not qualify for the 97 percent loan-to-value limitation provided for owner-occupants of property whose appraised value does not exceed $50,000. (See paragraph (a)(3) of this section.) A mortgage executed by an owner who is not the occupant of the property may equal:

(1) The lesser of the amount computed under paragraph (a) of this section or 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance; or

(2) The amount computed under paragraph (a) of this section (even if it is greater than 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance), if the mortgage covers a one- to two-family residence and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property before the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the property is not sold before the due date of the 18th amortization payment of the mortgage to a purchaser, acceptable to the Commissioner, who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

(d) *Outlying area properties.* A mortgage covering a single-family residence located in an area where the Commissioner finds it is not practicable to obtain conformity with many of the requirements essential to insurance of mortgages in built-up urban areas, or to be used as a farm home on a plot of land, two and one-half or more acres in size adjacent to an all-weather public road, shall not exceed:

(1) 75 percent of the limit on the principal obligation applicable to a one-family residence under paragraph (a)(1) of this section. Such limits may be increased by up to 20 percent if such an increase is necessary to account for the increased cost of the residence due to the installation of a solar energy system as defined in § 203.18a(b).

(2) 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, if:

(i) The dwelling was approved for insurance by the Commissioner prior to the beginning of construction; or

(ii) Construction was completed more than one year preceding the date of the application for insurance; or

(iii) The dwelling was approved for guaranty, insurance, or direct loan by the Secretary of Veterans Affairs prior to the beginning of construction.

(3) 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance in the case of all properties not meeting the requirements of paragraph (d)(2) of this section; and

(4) 85 percent of the appraised value of the property if the mortgagor is not an occupant thereof.

(e) *Disaster victims.* A mortgage covering a single family dwelling, in an amount not in excess of the maximum dollar limitation specified in paragraph (a)(1) of this section (unless a higher maximum mortgage amount is authorized under § 203.18b or § 203.29), and not in excess of the lesser of 100 percent of the appraised value of the property or the cost of acquisition as of the date the mortgage is accepted for insurance, shall be eligible for insurance if:

(1) The mortgage is executed by a mortgagor who will occupy the dwelling;

(2) The mortgagor establishes that the home which he or she previously occupied as owner or tenant was destroyed or damaged to such an extent that reconstruction or replacement is required as a result of a flood, fire, hurricane, earthquake, storm, riot or civil disorder or other catastrophe which the President has determined to be a major disaster; and

(3) The application for insurance is filed within one year from the date of such Presidential determination, or within such additional period of time as the period of Federal assistance with respect to such disaster may be extended.

(f) *Seasonal homes.* A mortgage covering a family residence designed for seasonal (rather than year-round) occupancy shall involve a principal obligation not in excess of $18,000, and not in excess of 75 percent of the appraised value of the property.

[36 FR 24508, Dec. 22, 1971, as amended at 42 FR 57434, Nov. 2, 1977; 44 FR 46836, Aug. 9, 1979; 45 FR 3902, Jan. 21, 1980; 45 FR 46377, July 10, 1980; 45 FR 51771, Aug. 5, 1980; 47 FR 33495, Aug. 3, 1982; 48 FR 44067, Sept. 27, 1983; 49 FR 12696, Mar. 30, 1984; 50 FR 19925, May 13, 1985; 52 FR 5534, Feb. 25, 1987; 53 FR 8880, Mar. 18, 1988; 54 FR 39525, Sept. 27, 1989]

§ 203.18a Solar energy system.

(a) The dollar limitation provided in § 203.18(a) may be increased by up to 20 percent if such an increase is necessary to account for the increased cost of the residence due to the installation of a solar energy system.

(b) "Solar energy system" is defined as any addition, alteration, or improvement to an existing or new structure which is designed to utilize wi energy or solar energy either of t active type based on mechanical forced energy transfer or of the pa sive type based on convective, condu tive, or radiant energy transfer some combination of these types reduce the energy requirements that structure from other energ sources and which is in conformit with such criteria and standards shall be prescribed by the Secretary consultation with the Secretary Energy.

[45 FR 51770, Aug. 5, 1980]

§ 203.18b Increased mortgage amount.

(a) For any geographic area in whic the Commissioner finds that moder ate- and middle-income persons hav limited housing opportunities due t high prevailing housing sales price the Commissioner may from time t time set mortgage limits that exceed the dollar limitations specified in § 203.18(a) to the extent the Commissioner deems necessary by publishing the applicable dollar limitations in a Notice in the FEDERAL REGISTER.

(1)(i) If a party believes that the mortgage limit for any area does not accurately reflect the extent to which moderate- and middle-income persons have limited housing opportunities due to high prevailing housing sale prices, the party may submit documentation in support of an alternative mortgage limit. For purposes of this paragraph (a)(1)(i), an "area" (A must at least be the size of a county, whether or not the area is located within a metropolitan statistical area, as established by the Office of Management and Budget; and (B) an area for which the mortgage limits contained in § 203.18(a) apply.

(ii) The documentation referred to in paragraph (a)(1)(i) of this section must consist of sufficient housing sales price data for the entire geographic area for which the request is made to justify the alternative mortgage limit. The documentation should include a listing of actual sales prices in the area for all or nearly all new and existing one-family homes and condominiums, over a period of time

that varies with the sales volume, as follows:

(A) For 500 or more sales per month, a one-month reporting period;

(B) For 250 through 499 sales per month, a two-month reporting period; and

(C) For less than 250 sales per month, a three-month reporting period.

The listing should contain a brief address for each property, its county location, its sale price, the month and year of its sale, and whether it is new or existing.

(iii) In areas where the ratio of existing sales to new sales is three-to-one or greater, an increase in the mortgage limit may be based on 95 percent of the average of the new and the existing median sales prices. In these areas, the documentation referred to in paragraphs (a)(1) (i) and (ii) of this section may also include separate median sales prices for both the new and existing homes.

(2) Requests for alternative mortgage limits, together with the supporting documentation, should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

(b)(1) The increased dollar limitation may not exceed the lesser of (i) 150 percent of the dollar limitation specified in § 203.18(a), or (ii) the following percentage of the median one-family house price in the area, as determined by the Commissioner:

(A) 95 percent for a one-family residence.

(B) 107 percent for a two-family residence.

(C) 130 percent for a three-family residence.

(D) 150 percent for a four-family residence.

(2) For purposes of paragraph (b)(1) of this section, the term "area" means a county, or a metropolitan statistical area as established by the Office of Management and Budget, whichever results in the higher dollar amount.

(c) In the case of an area where the Commissioner determines that the median one-family house price does not reasonably reflect the sales prices of newly constructed homes because of an existing stock whose value is static or declining, the Commissioner may give greater weight to the sales prices of new homes in determining median house price in such area. Without limiting the discretion of the Commissioner in fashioning appropriate methods of implementing the foregoing authority in particular circumstances based upon a demonstration of good cause satisfactory to the Commissioner, in areas where evidence satisfactory to the Commissioner indicates that existing home sales outnumber new home sales by three-to-one or better, the "median sales price" will be calculated as the greater of (1) the average of the median sales price for new and existing homes, and (2) the composite median price of all sales.

(Approved by the Office of Management and Budget under control number 2502-0302)

[45 FR 76377, Nov. 18, 1980, as amended at 47 FR 917, Jan. 7, 1982; 49 FR 12697, Mar. 30, 1984; 49 FR 14338, Apr. 11, 1984; 53 FR 8880, Mar. 18, 1988]

§ 203.18c One-time mortgage insurance premium excluded from limitations on maximum mortgage amounts.

After determining any maximum insurable mortgage amount under the provisions of this subpart, the maximum insurable amount of any mortgage subject to the provisions of § 203.259a may be increased by the amount of any one-time mortgage insurance premium that will be financed as part of the mortgage.

[49 FR 12697, Mar. 30, 1984]

§ 203.18d Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8880, Mar. 18, 1988]

§ 203.19 Mortgagor's minimum investment.

(a) At the time the mortgage is insured, the mortgagor shall have paid

in cash or its equivalent the following minimum amount:

(1) In all cases (except those involving a veteran meeting the requirements of § 203.18(b) or a disaster victim meeting the requirements of § 203.18(e)), the minimum investment shall be at least 3 percent of the Commissioner's estimate of the cost of acquisition (excluding the amount of any one-time mortgage insurance premium payable in accordance with § 203.280) or such other larger amount as the Commissioner may determine.

(2) In a case involving a veteran meeting the requirements of § 203.18(a)(3) or a disaster victim meeting the requirements of § 203.18(e), the minimum investment shall be $200 which may include settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

(b) A mortgagor who is 60 years of age or older, as of the date the mortgage is accepted for insurance, or whose mortgage meets the requirements of and is to be insured pursuant to § 203.18(d), or who is purchasing a single-family home under a low income housing demonstration project which is being assisted by the Secretary of Housing and Urban Development pursuant to section 207 of the Housing Act of 1961, may obtain a loan to meet the payment required by paragraph (a) of this section and to pay settlement costs. Such loan shall be from a corporation or person satisfactory to the Commissioner. The settlement costs paid with the loan may include initial payments for taxes, hazard insurance premium, mortgage insurance premium, and other prepaid expenses, as determined by the Commissioner. As security for the loan, the mortgagor may give a note or other evidence of indebtedness bearing interest at a rate not in excess of that permitted in the insured mortgage. The aggregate amount of the insured mortgage and the loan referred to in this section shall not exceed an amount equal to the Commissioner's estimate of the appraised value of the property, plus an amount equal to the initial payments for taxes, hazard insurance premium, mortgage insurance premium, and other prepaid expenses, as determined by the Commissioner.

(c) In a case involving the insurance of a mortgage on a seasonal home, the minimum investment shall be at least 25 percent of the appraised value of the property.

[36 FR 24508, Dec. 22, 1971, as amended at 48 FR 44067, Sept. 27, 1983; 50 FR 40196, Oct. 2, 1985; 53 FR 8880, Mar. 18, 1988]

§ 203.20 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

[36 FR 24508, Dec. 22, 1971, as amended at 49 FR 19457, May 8, 1984]

§ 203.21 Amortization provisions.

The mortgage must contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 203.22 Payment of insurance premiums or charges; prepayment privilege.

(a) *Payment of periodic insurance premiums or charges.* Except with respect to mortgages for which a one-time mortgage insurance premium is paid pursuant to § 203.280, the mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage may provide for a monthly payment by the mortgagor of an amount equal to one-twelfth of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue

only so long as the contract of insurance shall remain in effect.

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part on any installment due date, but shall not provide for the payment of any charge on account of such prepayment.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 8661, Apr. 29, 1972; 48 FR 26804, June 23, 1983; 50 FR 25914, June 24, 1985]

§ 203.23 Mortgagor's payments to include other charges.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize:

(1) The ground rents, if any;

(2) The estimated amount of all taxes;

(3) Special assessments, if any;

(4) Flood insurance premiums, if flood insurance is required by the Commissioner; and

(5) Fire and other hazard insurance premiums, if any, within a period ending 1 month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent, for the benefit and account of the mortgagor. The mortgage must also make provisions for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

(b) The mortgagor shall not be required to pay premiums for fire or other hazard insurance which protects only the interests of the mortgagee, or for life or disability income insurance, or fees charged for obtaining information necessary for the payment of property taxes. The foregoing does not apply to charges made or penalties exacted by the taxing authority, except that a penalty assessed or interest charged by a taxing authority for failure to timely pay taxes or assessments shall not be charged by the mortgagee to the mortgagor if the mortgagee had sufficient funds in escrow for the account of the mortgagor to pay such taxes or assessments prior to the date on which penalty or interest charges are imposed.

(c) Mortgages involving a principal obligation not in excess of $9,000 may contain a provision requiring the mortgagor to pay to the mortgagee an annual service charge at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such service charge exceed one-half of one percent per annum. Any such service charge shall be payable in monthly installments on the principal then outstanding. The provisions of this paragraph shall not apply to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after July 17, 1961.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 25231, Nov. 29, 1972; 41 FR 47934, Nov. 10, 1976]

§ 203.24 Application of payments.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance (other than a one-time mortgage insurance premium paid in accordance with § 203.280), charges for open-end advances, ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage; and

(4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

(b) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next such payment, constitute an event of default under the mortgage.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 25231, Nov. 29, 1972; 50 FR 25914, June 24, 1985]

§ 203.25 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed four per cent of the amount of each payment more than 15 days in arrears, to cover servicing and other costs attributable to the receipt of payments from mortgagors after the date upon which payment is due.

[41 FR 49734, Nov. 10, 1976]

§ 203.26 Mortgagor's payments when mortgage is executed.

(a) The mortgagor must pay to the mortgagee, upon execution of the mortgage, a sum that will be sufficient to pay the ground rents, if any, the estimated taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums for the period beginning on the last date on which each such charge would have been paid under the normal lending practices of the lender and local custom (if each such date constitutes prudent lending practice), and ending on the due date of the first full installment payment under the mortgage, plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment under the mortgage or, where applicable, the one-time mortgage insurance premium payable pursuant to § 203.280.

(b) The mortgagee may also collect from the mortgagor a sum not exceeding one-sixth of the estimated total amount of such taxes, special assessments, insurance premiums and other charges to be paid during the ensuing 12-month period.

[41 FR 49734, Nov. 10, 1976, as amended at 48 FR 28504, June 23, 1983]

§ 203.27 Charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) [Reserved]

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed:

(i) $20 dollars or one percent of the original principal amount of the mortgage (excluding any one-time mortgage insurance premium paid pursuant to § 203.280), whichever is the greater; or

(ii) $350 dollars or two and one-half percent of the original principal amount of the mortgage (excluding any one-time mortgage insurance premium paid pursuant to § 203.280), whichever is the greater, with respect to mortgages on property under construction or to be constructed where the mortgagee makes partial disbursements and inspections of the property during the progress of construction.

(iii) If the mortgage involves repair or rehabilitation, and the mortgagee meets the conditions of paragraph (a)(2)(ii) of this section relating to disbursements and inspections, the charge prescribed in paragraph (a)(2)(ii) of this section may be collected in connection with that portion of the mortgage applied to such repair or rehabilitation. The charge with respect to any part of the mortgage not applied to repair or rehabilitation, or any part of the mortgage so applied which does not meet the conditions of paragraph (a)(2)(ii) of this section relating to disbursements and inspections, shall be limited to that provided in paragraph (a)(2)(i) of this section.

(3) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Fees paid to an appraiser or inspector approved by the Commissioner for the appraisal and inspection, if required, of the property. Notwithstanding any limitations in this paragraph (a)(3) of this section, if the mortgagee uses the services of staff appraisers and inspectors for processing mortgages pursuant to § 200.163, for mortgages insured under these sections of

the National Housing Act specified therein, the mortgagee may collect from the mortgagor the reasonable and customary amounts for such appraisals and inspections.

(vi) Such other reasonable and customary charges as may be authorized by the Commissioner.

(4) Reasonable and customary charges in the nature of discounts.

(5) Interest from the date of closing or the date on which the mortgagee disburses the mortgage proceeds to the account of the mortgagor or the mortgagor's creditors, whichever is later, to the date of the beginning of amortization.

(b)-(c) [Reserved]

(d) Before the insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in a form satisfactory to the Commissioner listing any charge, fee or discount collected by the mortgagee from the mortgagor. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(e) Nothing in this section will be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

[36 FR 24508, Dec. 22, 1971, as amended at 43 FR 19846, May 9, 1978; 45 FR 30602, May 9, 1980; 45 FR 33966, May 21, 1980; 47 FR 29525, July 7, 1982; 48 FR 11940, Mar. 22, 1983; 48 FR 28804, June 23, 1983; 49 FR 19457, May 8, 1984]

§ 203.28 Economic soundness of projects.

The mortgage must be executed with respect to a project which, in the opinion of the Commissioner, is economically sound, except that this section shall not apply in each of the following instances:

(a) To a mortgage of the character described in § 203.18(d) and with respect to such a mortgage, the Commissioner shall determine that the mortgage is an acceptable risk giving consideration to the need for providing adequate housing for families of low and moderate income, particularly in suburban and outlying areas or small communities.

(b) To a mortgage of the character described in § 203.18 (e).

(c) To a mortgage of the character described in § 203.43a.

(d) To a mortgage in a federally impacted area described in § 203.43e.

(e) To a rehabilitation loan of the character described in § 203.50.

[36 FR 24508, Dec. 22, 1971, as amended at 42 FR 57434, Nov. 2, 1977; 45 FR 33966, May 21, 1980; 53 FR 8880, Mar. 18, 1988]

§ 203.29 Eligible mortgages in Alaska, Guam, or Hawaii.

(a) If the Commissioner finds that, because of higher prevailing costs in Alaska, Guam, or Hawaii, it is not feasible to construct dwellings within the maximum mortgage limits provided in this part without sacrificing sound standards of construction, design, or livability, the Commissioner may increase the principal obligation of mortgages insurable for those areas under this part by the publishing in the FEDERAL REGISTER a Notice stating the amounts necessary to compensate for such costs, but not to exceed, in any event, the otherwise applicable maximum (including any high-cost area increases) by more than one-half thereof.

(b) If a party believes that the otherwise applicable mortgage limit needs to be increased to reflect the extent to which high costs make it infeasible to construct dwellings without sacrificing sound standards of construction, design or livability, the party may submit documentation in support of an alternative mortgage limit. This documentation should include actual or estimated costs of such items as design, construction, materials, and labor. In addition, actual sales prices of new homes may be submitted, together with any other documentation requested by the Commissioner. Requests for alternative mortgage limits, together with supporting documentation should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

(c) If the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, or if the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart, may be insured without regard to any requirement that the mortgagor:

(1) Be the owner and occupant of the property;

(2) Has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Certify that the mortgaged property be free and clear of all liens other than the mortgage offered for insurance and that there will not be any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property

(d) The provisions of § 203.28 requiring economic soundness shall not be applicable to mortgages covering property located in Alaska or in Guam or in Hawaii, but the Commissioner shall find that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam or in Hawaii.

(Approved by the Office of Management and Budget under control number 2502-0302)

[36 FR 24508, Dec. 22, 1971, as amended at 49 FR 14338, Apr. 11, 1984]

§ 203.30 Certificate of nondiscrimination by the mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 203.31 Owner-occupancy in military service cases.

(a) Any mortgage otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor be the occupant of the property at the time of insurance where the Commissioner is satisfied that the inability of the mortgagor to occupy the property is by reason of his entry into military service subsequent to the filing of an application for insurance and the mortgagor expresses an intent (in such form as may be prescribed by the Commissioner), to occupy the property upon his discharge from the service.

(b) A serviceman shall also be considered an owner-occupant for mortgage insurance purposes if the following conditions are satisfied:

(1) *Period of occupancy.* The serviceman and his family must expect to occupy the property for 2 or more years. This period may be shortened to 1 year if the serviceman's family will occupy the property for at least 1 year and if the serviceman is assigned to a combat zone or other hazardous duty area where the family cannot accompany him.

(2) *Location of property.* The property must be located in an area in which the prospects of resale are reasonable.

[37 FR 16390, Aug. 12, 1972]

Eligible Mortgagors

§ 203.32 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that, after the mortgage offered for insurance has been recorded, the mortgaged property will be free and

clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With prior approval of the Commissioner, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien, held by a Federal, State, or local government agency or instrumentality provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Commissioner.

(c) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(4) The repayment terms shall not provide for a balloon payment before ten years, or for such other term as the Commissioner may approve, except that the mortgage may become due and payable on sale or refinancing of the secured property covered by the insured mortgage; and

(5) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iii) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment. Any full or partial prepayment will not be recoverable by the mortgagor if, by application of paragraph (d)(1)(ii) on sale or refinancing of the property, a lesser amount than the amount prepaid would have been due.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

[45 FR 19223, Mar. 25, 1980, as amended at 50 FR 20906, May 21, 1985]

§ 203.33 Relationship of income to mortgage payments.

(a) Adequacy of mortgagor's gross income. A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet (1) the periodic payments required by the mortgage submitted for insurance and (2) other long-term obligations.

(b) *Stability of mortgagor's income.* Only that part of the mortgagor's income which can be expected to continue for approximately the first 5 years of the mortgage term will be considered effective income for the purpose of determining the adequacy of the mortgagor's income, as set forth in paragraph (a) of this section.

(c) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, source of income of the mortgagor or location of the property

[37 FR 16390, Aug. 12, 1972, as amended at 54 FR 38649, Sept. 20, 1989]

§ 203.34 Credit standing.

A mortgagor must have a general credit standing satisfactory to the Commissioner.

§ 203.35 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0059, 2502-0159, and 2502-0268)

[54 FR 39693, Sept. 27, 1989]

§ 203.36 Certificate and contract regarding use of dwelling for transient or hotel purposes.

A mortgagor under a mortgage covering two-, three-, or four-family dwellings, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same mortgagor, must certify under oath that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. The mortgagor shall further execute a contract with the Commissioner providing that so long as the said mortgage is insured he will not rent such housing, or any part thereof, for transient or hotel purposes as such purposes are defined in § 203.16.

Eligible Properties

§ 203.37 Nature of title to realty.

A mortgage, to be eligible for insurance, must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

[49 FR 21319, May 21, 1984]

§ 203.38 Location of dwelling.

At the time a mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families. Such unit may be connected with other dwellings by a party wall or otherwise.

§ 203.39 Standards for buildings.

The buildings on the mortgaged property must conform with the standards prescribed by the Commissioner.

§ 203.40 Location of property.

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, or American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

[49 FR 12697, Mar. 30, 1984]

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if said property is a part of, or adjacent or contiguous to a project, subdivision or group of similar rental properties which involve twelve or more dwelling units if the mortgagor has any financial interest in said properties:

Provided, That with respect to applications received by the Commissioner on or after August 31, 1955, the number of dwelling units referred to in this paragraph shall be reduced to eight.

(b) No two-, three-, or four-family dwelling nor single-family dwelling, if it is a part of a group of five or more single-family dwellings held by the same mortgagor or any part or unit thereof shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as such dwelling is subject to any insured mortgage.

§ 203.43 Eligibility of miscellaneous type mortgages.

(a) A mortgage which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage may be accepted for insurance if:

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Pub. L. 849, Seventy-sixth Congress, as amended; Pub. L. 781, Seventy-sixth Congress, as amended; or Pub. L. 9, 73 or 353, Seventy-seventh Congress, as amended (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, or any housing (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Pub. L. 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the occupancy of veterans (persons who have served in the active military or naval service of the United States

at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to February 1, 1955) their families and others: *Provided*, That the principal obligation of a mortgage referred to in this paragraph shall not exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (b) (1), (2), (3), and (4) of this section.

(c) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage given to refinance an existing mortgage which is insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(1)(i) Except as provided by paragraph (c)(1)(ii) of this section, the refinancing mortgage must be in an amount that does not exceed the lesser of (A) the original principal amount of the existing mortgage, or (B) the sum of the unpaid principal balance of the existing mortgage, plus loan closing charges approved by the Commissioner;

(ii) In the case of graduated payment mortgages insured under section 203 of the Act pursuant to section 245 (a) or (b) of the Act (24 CFR 203.45, or 203.46 (as in effect immediately before its removal at 52 FR 32754, published August 28, 1987)), the refinancing mortgage must have a principal amount that does not exceed the outstanding balance of the existing mortgage.

(iii) If a one-time mortgage insurance premium (MIP) was financed as part of the existing mortgage referred to in paragraphs (c)(1) (i) and (ii) of this section, the amount of the premium refund to which the mortgagor is entitled must be deducted in determining the original principal amount and the unpaid principal balance of the existing mortgage under paragraph (c)(1)(i) of this section and the outstanding balance of the existing mortgage under paragraph (c)(1)(ii) of this section. However, the maximum amount of the refinancing mortgage computed in accordance with this paragraph (c)(1) may be increased by the amount of the one-time MIP (if any) associated with the refinancing mortgage;

(2) It must have a term which does not exceed the unexpired term of the existing mortgage, except that in any case where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, the term may be extended to the lesser of (i) 30 years or (ii) the unexpired term of the existing mortgage, plus 12 years;

(3) It must result in a reduction in regular monthly mortgage payments by the mortgagor; in the case of a graduated payment mortgage, this means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed;

(4) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner; and

(5) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(d)—(f) [Reserved]

(g) The provisions of § 203.28 shall not apply to mortgages insured under this section.

(h) The provisions of § 203.38 shall not apply to mortgages of the character described in paragraph (b) of this section and at the time any such mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than eight families.

(i)—(j) [Reserved]

(k) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired in the settlement of an insurance

claim under any section or title of the Act.

[36 FR 24508, Dec. 22, 1971, as amended at 45 FR 30602, May 8, 1980; 47 FR 29525, July 7, 1982; 52 FR 4139, Feb. 10, 1987; 52 FR 37307, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987; 53 FR 8880, Mar. 18, 1988]

§ 203.43a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, construction, or purchase of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of low and moderate income.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.

(a) A mortgage covering a family residence designed for seasonal (rather than year-round) occupancy shall be eligible for insurance if the following additional requirements are met:

(1) The mortgage shall cover a single-family dwelling, approved for insurance prior to the beginning of construction, which is to be occupied by the mortgagor.

(2) The dwelling shall meet such minimum standards as the Secretary may prescribe for dwellings for seasonal use.

(3) The dwelling shall be located in an area where the Secretary finds it is not practicable to obtain conformity with standards prescribed for mortgage insurance in urban areas.

(4) The mortgage shall be an acceptable risk, giving consideration to the economic potential of the area in which the dwelling is located and the contribution that the housing will make to the area.

(5) The mortgage shall cover a dwelling on property that is being developed in a manner consistent with the conservation of the natural resources of the area in which the property is located.

(b) The Secretary may suspend the issuance of commitments for mortgage insurance under this section for such areas as he may designate if he makes the following determinations:

(1) There is a serious and unusual shortage of mortgage funds for residential construction in the designated area.

(2) Insurance of mortgages on properties intended for seasonal occupancy would materially and adversely affect the availability of mortgage funds for residential construction in the designated area.

(3) Such suspension would not have an adverse effect on the balanced economic development of the designated area.

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

A mortgage involving a dwelling unit in a cooperative housing development which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under section 203(n) of the National Housing Act.

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.18b, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43h, 203.43i, 203.43j, 203.44, 203.49, and 203.50 of this part do not apply to mortgages insured under section 203(n) of the National Housing Act.

(b) As used in connection with the insurance of mortgages under this section and § 203.437 of this part: (1) The term "mortgage" shall mean a first

lien given to secure a loan made to finance the unpaid purchase price of a Corporate Certificate together with the applicable Occupancy Certificate of a cooperative ownership housing corporation in which the permanent occupancy of the dwelling units is restricted to members of such corporation, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed" or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

(2) "Corporation" shall mean an organization which holds title to a cooperative housing development which is covered by a blanket mortgage or mortgages insured by FHA under the National Housing Act.

(3) "Corporate Certificate" shall mean such stock certificates, membership certificates, or other instruments which the laws of the jurisdictions in which the cooperative housing development is located require to evidence ownership of a specified interest in the corporation.

(4) "Occupancy Certificate" shall mean a written instrument provided by the corporation to each holder of a Corporate Certificate which grants an exclusive right of possession of a specific dwelling unit in the cooperative housing development.

(5) References in this subpart to a dwelling, residence or property which is sold, conveyed, covered by a mortgage or subject to a lien shall be construed to mean the Corporate Certificate together with the Occupancy Certificate, except that where such references when interpreted in light of section 203(n) of the National Housing Act clearly indicate the intent to be the dwelling unit, such reference shall mean the dwelling unit identified in the Occupancy Certificate.

(c) The organizational documents of the cooperative corporation must provide that: (1) Either the Secretary or a mortgagee under a mortgage insured under this section shall be a member of the cooperative corporation for so long as either owns a Corporate Certificate;

(2) A mortgage insured under th section shall be a first lien upon th property covered by the mortgage;

(3) The Secretary may exercise th voting rights which are attributable t each Corporate Certificate owned b the Secretary;

(4) The Secretary may designate a her proxy an agent for the purpose o exercising the voting rights of the Sec retary which are attributable to the corporate Certificate or Certificates owned by the Secretary;

(5) The Secretary may cease making monthly payments attributable to any dwelling unit for which the Secretary owns a Corporate Certificate six months after the Secretary notifies the corporation to sell the Corporate Certificate or upon default by the corporation on the blanket mortgage covering the dwelling unit;

(6) The Secretary or a mortgagee shall not be obligated to make payments to the corporation for any amounts unpaid by a mortgagor under a mortgage insured under this section prior to the date the Secretary or the mortgagee becomes the owner of the Corporate Certificate.

(d) The corporation shall have entered into an agreement with the Secretary and the mortgagee which: (1) Requires that the corporation shall furnish the Secretary with the most recent annual financial report certified to have been based on generally accepted accounting principles and the most recent monthly or quarterly financial report;

(2) Waives any option or right of first refusal the corporation may have to purchase any Corporate Certificate covered by a mortgage insured under section 203(n) of the National Housing Act, unless the corporation pays the full amount due under such mortgage or pays the full amount of the Secretary's investment if the Secretary is the owner of the Corporate Certificate, whichever is greater.

(3) Except with the approval of the Secretary, waives all authority the corporation may have to approve or reject the buyer of a Corporate Certificate owned by the Secretary or the buyer of a Corporate Certificate covered by a mortgage insured under Sec-

tion 203(n) of the National Housing Act.

(4) Requires the corporation on notice by the Secretary to act as her agent for a fee to be determined by the Secretary for the limited purposes of:

(i) Selling all Corporate Certificates of the corporation owned by the Secretary;

(ii) Renting and collecting rents on any dwelling unit for which the Secretary owns the Corporate Certificate.

(5) Provides that the Secretary shall not be obligated to make payments to the corporation for outstanding debts of the mortgagor;

(6) Requires the corporation to furnish to a mortgagee or to the Secretary, on request:

(i) A statement, certified by the officer charged with maintenance of the Corporate Certificate Transfer Book, that such book currently shows that the mortgagee or the Secretary is the owner of any Corporate Certificate transferred to the mortgagee or the Secretary; and

(ii) The Occupancy Certificate in the name of the mortgagee or the Secretary.

(7) Requires the corporation to notify the mortgagee, whose name and address has been provided, of any default in corporation fee payments by the mortgagor within 15 days of such default;

(8) Requires the mortgagee to notify the corporation of any default in mortgage payments by the mortgagor within 15 days of such default;

(9) Requires the corporation upon notice by the Secretary or the mortgagee, when the Secretary or the mortgagee is the owner of the Corporate Certificate, and for a fee to be determined by the Secretary to evict any person or persons from a dwelling unit identified in the Occupancy Certificate.

(10) Contains such other provisions as the Secretary may require.

(e) The mortgagee shall obtain such security and other undertakings as may be required to establish a first lien on the Corporate Certificate and the Occupancy Certificate under the laws of the State where the Cooperative Housing Development is located.

(f) The mortgage involves a one-family dwelling unit in a cooperative housing development which is covered by a blanket mortgage or mortgages insured under the National Housing Act.

(g) The mortgage shall not exceed the balance remaining after subtracting from the amount determined under §§ 203.18(a), 203.18a, and 203.18b of this part an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

(h) The mortgage shall be executed upon a form conforming to the applicable provisions of this part and shall:

(1) Involve a principal obligation in multiples of $50.

(2) Come due on the first of the month.

(3) Contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

(4) Be for a term not to exceed 30 years or the remaining term of the blanket mortgage covering the cooperative development or three-quarters of the remaining economic life of the building improvements, whichever is less.

(5) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

(6) Contain a provision stating that the failure of the mortgagor to pay the mortgagor's share of the common expenses or assessments and charges imposed by the corporation as provided in the instruments establishing the cooperative shall be considered a default.

(i) The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

(j) The mortgage must be executed by a mortgagor who intends to be an occupant of the unit.

(k) The mortgagee shall collect from the mortgagor upon the execution of the mortgage: (1) A sum that will be sufficient to pay the mortgage insurance premium for the period beginning on the date of the closing of the loan and ending on the date of the first monthly payment under the mortgage or (2), where applicable, the one-time mortgage insurance premium payable pursuant to § 203.280.

(l) The mortgagee shall upon application for a mortgage insurance commitment provide true copies of the following organizational documents of the cooperative corporation for examination and approval by the appropriate HUD Field Office:

(1) Certificate of Incorporation;

(2) Regulatory Agreement;

(3) By-Laws as amended;

(4) The financial statements required in paragraph (d)(1) of this section;

(5) Proposed Occupancy Certificate;

(6) Proposed Corporate Certificate;

Provided that one or more of the requirements of this paragraph may be waived by the Secretary if the documents have been approved by the Secretary and the mortgagee submits with the application a statement certified by an officer of the cooperative corporation that no changes have been made in the documents since such approval.

[42 FR 40431, Aug. 10, 1977, as amended at 45 FR 29278, May 2, 1980; 45 FR 76377, Nov. 18, 1980; 48 FR 12085, Mar. 23, 1983; 48 FR 28804, June 23, 1983; 49 FR 23584, June 6, 1984; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988; 53 FR 34282, Sept. 6, 1988]

§ 203.43d Eligibility of mortgages in certain communities.

Notwithstanding any other requirements of this subpart, a mortgage covering a 1-4 family property occupied by the owner shall be eligible for insurance if the following requirements are met:

(a) The property is located in a community where the Secretary determines that:

(1) Temporary adverse economic conditions exist throughout the community as a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, or Nation;

(2) Such ownership claims are reasonably likely to be settled, by court action or otherwise;

(3) As a direct result of the community's temporarily impaired economic condition, owner occupants of homes in the community have been involuntarily unemployed or underemployed and have thus incurred substantial reductions in income which significantly impair their ability to continue timely payment of their mortgages;

(4) As a result, widespred mortgage foreclosures and distress sales of homes are likely in the community; and

(5) Fifty or more individuals were joined as parties defendant or were members of a defendant class prior to December 31, 1976 in litigation involving claims to ownership of land in the community by an American Indian tribe, band or Nation.

(b) The mortgagor, as a direct result of the community's temporarily impaired economic condition, has been involuntarily unemployed or underemployed and has thus incurred a substantial reduction in income which significantly impairs the owners ability to continue timely payment of the mortgage.

(c) The mortgagee certifies that the security instrument has been recorded and is a good and valid first lien on the property except for the claims specified in paragraph (a)(1) of this section.

(d) The mortgagee agrees upon insurance of the mortgage to assign such mortgage to the Secretary within 30 days from the date of the issuance of the insurance certificate and if such assignment does not take place, the contract of insurance is terminated and becomes null and void.

(e) Any individual, organization, institution or governmental agency shall be considered a mortgagee for the purposes of this section.

(f) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 203(o) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

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(g) The mortgage was executed and filed for record on or before October 12, 1977.

[42 FR 57434, Nov. 2, 1977]

§ 203.43e Eligibility of mortgages covering homes in federally impacted areas.

(a) A mortgage executed in connection with the construction, repair, rehabilitation or purchase of property located near any installation of the Armed Forces of the United States in federally impacted areas shall be eligible for insurance pursuant to this part if the Secretary finds the following additional requirements are met;

(1) The benefits to be derived from such use outweigh the risk of probable cost to the Government; and

(2) The Secretary of Defense certifies that there is no intention to curtail substantially the personnel assigned or to be assigned to such installation.

(b) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 238(c) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

[42 FR 57434, Nov. 2, 1977]

§ 203.43f Eligibility of mortgages covering manufactured homes.

A mortgage covering a one-family manufactured home (as defined in 24 CFR 3280.2(a)(16)) that meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance pursuant to this subpart.

(a) The manufactured home, when erected on site, shall have floor space area of not less than four hundred square feet and shall have been constructed in conformance with the National Manufactured Home Construction and Safety Standards as evidenced by a certification label affixed thereto in accordance with 24 CFR 3280.8.

(b) The mortgage shall cover the manufactured home and site, shall constitute a mortgage on a property classified and taxed as real estate, and shall have a term of not more than 30 years from the date of the beginning of amortization. Section 203.17(e) of this subpart shall not be applicable.

(c) In the case of a manufactured home which has not been permanently erected on a site for more than one year prior to the date of the application for mortgage insurance:

(1) The manufactured home shall be erected on a site-built permanent foundation that meets or exceeds applicable requirements of the Minimum Property Standards for One- and Two-Family Dwellings, 4900.1 (see 24 CFR 200.929(b)(1)) (MPS) and shall be permanently attached thereto by anchoring devices adequate for all loads identified in the MPS. The towing hitch or running gear, which includes axles, brakes, wheels and other parts of the chassis that operate only during transportation, shall have been removed. The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation. The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the MPS.

(ii) The space beneath the manufactured home shall be enclosed by continuous foundation-type construction designed to resist all forces to which it is subject without transmitting forces to the building superstructure. The enclosure shall be adequately secured to the perimeter of the manufactured home and be constructed of materials that conform to MPS requirements for foundations.

(iii) The manufactured home shall have an overall coefficient of heat transmission ("U_o" value) calculated in accordance with the procedures of NFPA 501 BM-1976 ("Mobile Home Heating, Cooling Load Calculations") that does not exceed the following for all locations within the following climatic zones:

Zone I	.145
Zone II	.099
Zone III [1]	.087

NFPA 501 BM–1976 is incorporated by reference and is issued by and available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(iv) The manufactured home shall be braced and stiffened before it leaves the factory to resist racking and potential damage during transportation.

(v) The conditions of § 203.18(a)(2)(i) and (ii) of this subpart shall not apply to construction of the manufactured home but shall be applicable to improvement of the site, including construction of the site-built foundation.

(vi) Section 203.14 of this subpart is modified to the extent provided in this paragraph. Applications relating to insurance of mortgages under this paragraph (c) must be accompanied by an agreement in form satisfactory to the Commissioner executed by the seller or builder or such other person as the Commissioner may require agreeing that in the event of any sale or conveyance of the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property the manufacturer's warranty on a form prescribed by the Commissioner, which shall provide that the manufacturer's warranty is in addition to and not in derogation of all other rights and remedies the purchaser or owner may have, and a warranty in form satisfactory to the Commissioner warranting that the manufactured home, the foundation, positioning and anchoring of the manufactured home to its permanent foundation, and all site improvements are constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Commissioner) on which the Commissioner has based his valuation of the dwelling. The warranty shall also include provisions that the manufactured home sustained no hidden damage during transportation, and that the manufactured home is a double wide, that the sections were properly joined and sealed. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Commissioner with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

(d) In the case of a manufactured home which has been permanently erected on a site for more than one year prior to the dae of the application for mortgage insurance:

(i) The manufactured home shall be permanently anchored to and supported by permanent footings and shall have permanently installed utilities that are protected from freezing. The space beneath the manufactured home shall be a properly enclosed crawl space.

(ii) The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the Requirements for Existing Housing—One to Four Family Living Units (Handbook 4905.1). The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation.

(iii) The manufactured home shall have been occupied only at the location subject to the mortgage sought to be insured.

[48 FR 7735, Feb. 24, 1983]

§ 203.43g Eligibility of mortgages in certain communities.

(a) A mortgage which meets the requirements of this subpart shall be eligible for insurance without regard to the limitation in this part relating to marketability of title under the following conditions:

(1) The mortgagor is an owner-occupant of the property.

[1] Zone III includes Alaska, Montana, Wyoming, North and South Dakota, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, and Vermont.

(2) The defect or potential defect in title is a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, group or Nation.

(3) Fifty or more individual owners were joined as parties defendant or were members of a defendant class before April 1, 1980 in litigation involving claims to ownership of land in the community in which the property is located by an American Indian tribe, band, group or Nation pursuant to a dispute involving the Articles of Confederation, the Trade and Intercourse Act of 1790 or any similar State or Federal law.

(4) Such ownership claims are reasonably likely to be settled by court action or otherwise.

(5) Temporary adverse economic conditions exist throughout the community as a direct and primary result of such claims.

(b) Mortgages complying with the requirements of this subpart as modified by this section shall be the obligation of the Special Risk Insurance Fund.

[49 FR 21319, May 21, 1984]

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

A mortgage on a leasehold covering a one- to four-family residence located on Indian land where the mortgagor is an Indian who will occupy it as a principal residence shall be eligible for insurance pursuant to section 248 of the National Housing Act, notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares is not authorized under this section.

(a) *Exemptions.* (1) The provisions of Subparts I, J, and M of Part 200, and § 203.30, shall not apply to approval of mortgagors for mortgages insured under this section if the Indian tribe to which the prospective mortgagor belongs is subject to the Indian Civil Rights Act.

(2) In the case of an Indian tribe which is not subject to the Indian Civil Rights Act, the authorities cited in paragraph (a)(1) of this section shall apply, but any preference in the tribe's approval of the sale or assumption of a lease and mortgage under this section in favor of an eligible Indian over a non-Indian shall not be considered to be a violation of Subpart I, J or M.

(b) *Eviction procedures.* Before HUD will issue any commitment to insure a mortgage on Indian land, the tribe having jurisdiction over such property must certify to the HUD Field Office that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the insured mortgage has been foreclosed.

(1) *Enforcement.* If HUD's Field Office Manager determines that the tribe has failed adequately to enforce its eviction procedures, HUD will cease issuing commitments for the insurance of mortgages to tribal members. Adequate enforcement is demonstrated where prior evictions have occurred within 60 days after the date of the notice by HUD that foreclosure was completed.

(2) *Review.* If HUD's Field Office Manager ceases issuing commitments to insure in accordance with paragraph (b)(1) of this section, HUD will notify the tribe of the reasons for such action and that the tribe may, within 60 days after notification of HUD's action, file a written appeal with the Field Office Manager. Within 60 days after notification of an adverse decision by the Field Office Manager, the tribe may file a written request for review with the Regional Administrator. Upon notification of an adverse decision by the Regional Administrator, the tribe has 60 additional days to file an appeal with the Secretary. The determination of the Secretary shall be final, but the tribe may resubmit the issue to the Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR Part 24.)

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(c) *Approval of lease and mortgage.* The lease must be on a form prescribed by HUD.

The mortgage must be on a form which meets the requirements of § 203.17(a)(2). Before HUD will insure any mortgage under this section, the mortgagee must demonstrate that the Bureau of Indian Affairs, U.S. Department of Interior, has approved both the lease and mortgage.

(d) *Construction advances.* The Commission may issue a commitment for the insurance of advances made during construction. The Commissioner will insure advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgage shall be a first lien on the leasehold;

(2) The mortgagor and the mortgagee execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made;

(3) The advances are made only as provided in the commitment;

(4) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement;

(5) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor; and

(6) The Secretary had determined that no feasible financing alternative is available.

(e) *Assumption or sale of leasehold.* The form of lease must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Secretary through foreclosure of the insured mortgage. A mortgagee other than the Secretary must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Secretary, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is insured or held by Secretary.

(f) *First lien.* The first lien requ ment under this part is implemen where the mortgage is filed in State recording system and is a f lien under that system, even tho the leasehold interest securing mortgage is located on Indian l and filed with Bureau of Indian fairs, U.S. Department of the Inter Any tribal government whose cou have jurisdiction to hear foreclosu must also (1) enact a law sastisfacto to the Commissioner providing for t satisfaction of FHA-insured and Sec tary-held mortgages before other ob gations other than tribal leasehol taxes against the property assess after the property is mortgaged) a satisfied; or (2) enact a law providi that State law shall determine the p ority of liens against the property.

(g) *Definitions.* As used in this se tion and elsewhere in this part, th term:

(1) "Indian" means and individu member of any Indian tribe and th member's family.

(2) "Indian land" means trust or ot erwise restricted land (i) as defined b the Secretary of the Interior, ov which an Indian tribe is recognized b the United States as having gover mental jurisdiction; (ii) held in tru for the benefit of any Indian tribe individual or held by any Indian tri or individual subject to a restriction b the United States against alienatio or (iii) acquired by Alaska native under the Alaska Native Claims Settl ment Act or any other land acquire by Alaska natives pursuant to statut by virtue of their unique status a Alaska natives.

(3) "Indian tribe" means any India or Alaska native tribe, band, nation, o other organized group or communit of Indians or Alaska natives reco nized as eligible for the services pro vided to Indians or Alaska natives b the Secretary of the Interior becaus of its status as such an entity, or tha is an eligible recipient under chapte 67 of title 31, United States Code.

(Approved by the Office of Manageme and Budget under control number 250 0340)

[51 FR 21871, June 16, 1986, as amended at 53 FR 34282, Sept. 6, 1988]

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

(a) *Eligibility.* A mortgage on a homestead lease granted by the Department of Hawaiian Home Lands covering a one- to four-family residence located on Hawaiian home lands is eligible for insurance pursuant to section 247 of the National Housing Act if the mortgagor is a native Hawaiian who will occupy it as a principal residence, and if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares under § 203.43c on homes in federally impacted areas under § 203.43e, and on rehabilitation loans under § 203.50, is not authorized under this section.

(b) *Exemptions from other regulations.* The provisions of Subparts I, J, and M of Part 200, and § 203.30, to the extent that these provisions would otherwise prohibit preferences in favor of Native Hawaiians in the leasing, sale or other disposition of Hawaiian home lands, do not apply to mortgages insured pursuant to section 247 of the National Housing Act. The first lien requirement contained in § 203.17 also does not apply to mortgages insured pursuant to section 247 of the National Housing Act.

(c) *Definitions.* (1) "Department of Hawaiian Home Lands" (DHHL) is a Department of the State of Hawaii responsible for management of Hawaiian home lands for the benefit of native Hawaiians.

(2) "Hawaiian home lands" means all land given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provisions of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959.

(3) "Native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before Janaury 1, 1778 (or, in the case of an individual who succeeds a spouse or parent in an interest in a lease of Hawaiian home lands, such lower percentage as may be established for such succession under section 209 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959).

(d) *Condition for issuance of commitments.* Commitments to insure mortgages under this section will only be issued where the Department of Hawaiian Home Lands:

(1) Will be a comortgagor;

(2) Guarantees or reimburse the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian home lands; or

(3) Offers other security acceptable to the Secretary.

(e) *Acceptable security.* Any agreement by the Secretary to accept alternative security under paragraph (d)(3) of this section must contain provisions designed to ensure that the insurance of mortgages under this section has a neutral impact on the appropriate insurance funds. These provisions may require the Department of Hawaiian Home Lands to make an initial deposit of funds with HUD and to maintain additional funds in reserve for subsequent deposits with HUD. The initial and subsequent deposits shall be used to pay obligations incurred by HUD in connection with the insurance of mortgages under this section and any associated costs, including refunds of insurance premiums to mortgagors. If the Department of Hawaiian Home Lands agrees to make deposits in amounts acceptable to HUD, then the Secretary may agree to use a portion of the premiums received for insurance of mortgages under this section solely for payment of such obligations and associated costs.

(f) *Recordation.* The mortgagee must certify that the mortgage has been recorded with the Department of Hawaiian Home Lands.

(g) *Construction advances.* The Secretary may issue a commitment for

the insurance of advances made during construction. The Secretary will insure advances made by the mortgagee during construction if the Secretary has determined that no feasible financing alternative is available and if the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by the Secretary, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the commitment;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(h) *Form of lease.* The form of lease must be approved by both HUD and the Department of Hawaiian Home Lands (DHHL). The form of lease must contain a provision requirung that, while the mortgage insurance remains in effect, assumption of the leasehold is restricted to those persons who have certificates issued by the DHHL certifying that they are Native Hawaiians. The lease may not be terminated by DHHL without the approval of the Secretary while the mortgage is insured or held by the Secretary.

(i) *Eligibility of mortgagor.* In addition to the eligibility requirements contained in this subpart, the mortgagor must produce the following documentation in order to establish his or her eligibility:

(1) A certificate of eligibility issued by the Department of Hawaiian Home Lands certifying that the mortgagor is a Native Hawaiian; and

(2) A homestead lease granted to the mortgagor by the Department of Hawaiian Home Lands.

(Approved by the Office of Management and Budget under control number 2502-0358)

[52 FR 8067, Mar. 16, 1987, and 52 FR 28470, July 30, 1987, as amended at 53 FR 8881, Mar. 18, 1988; 53 FR 34282, Sept. 6, 1988]

§ 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

A mortgage on a leasehold estate covering a one- to four-family residence located on the Allegany Reservation of the Seneca Nation of Indians in the State of New York is eligible for insurance if the mortgage meets the requirements of this subpart as modified by this section.

(a) *Title.* This section applies only to a mortgage which:

(1) Does not meet the requirements of § 203.37;

(2) Is on a leasehold under a lease with a termination date in February 1991, which provides for renewal in accordance with the Act of February 19, 1875 (18 Stat. 330) and the Act of September 30, 1890 (26 Stat. 558).

A mortgage may not be on a leasehold created by a lease which is executed after the effective date of this section as a renewal or replacement of a lease described in paragraph (a)(2) of this section. A mortgage may not be secured by any other right of occupancy created in lieu of a leasehold after the effective date of this section by agreement of the Seneca Nation, court order, law or any other means.

(b) *Provisions of mortgage.* The Secretary will prescribe special mortgage provisions in the form of a mortgage rider in order better to secure the mortgagee, including:

(1) Authorization for the mortgagee to exercise the option of lease renewal if the mortgagor fails to do so, and to recover from the mortgagor authorized expenses incurred to obtain lease renewal; and

(2) Making a mortgagor failure to take steps necessary for less renewal an event of default under the mortgage.

(c) *Secretary agreement with mortgagor.* The mortgagor must enter into an agreement with the Secretary and such other parties as the Secretary may require regarding actions to be taken to obtain either a renewal of the lease or a new lease.

(d) *Certification.* The borrower must certify that it has received disclosures, in a form prescribed by the Secretary, explaining the status of the lease and the consequences of nonrenewal. The disclosure shall include a discussion of the fact that a mortgagor who does not obtain a lease renewal and loses the right of occupancy will remain liable for the outstanding balance of the mortgage.

(e) *Owner-occupant purchase or refinance.* The mortgagor must be either a purchaser intending to occupy the property as a principal residence, or a current owner-occupant refinancing a mortgage which is now due or which will become due before the lease termination date in February 1991.

(f) *Relationship of income to housing expense.* For purposes of § 203.33(a), the total prospective housing expense shall include the Secretary's estimate of future lease payments during the term of the mortgage rather than lease payments in effect at the time of application.

(g) *Suspension of commitments.* The Secretary may suspend the issuance of commitments to insure mortgages under this section, for the entire period during which commitments could otherwise be issued for insurance under this section (i.e., through February 18, 1991) or for such lesser period as the Secretary may specify, by providing thirty days notice of suspension in the FEDERAL REGISTER. Regardless of its duration, a suspension to be imposed prior to February 19, 1990, will be based on a determination by the Secretary that, for mortgages insured during a specified period, the rate of monetary defaults (as measured by 90 day delinquencies) for mortgages insured under this section exceeds the rate of such monetary defaults for all insured mortgages on one- to four-family properties in the State of New York. A suspension to be imposed after February 18, 1990, will be based on a consideration by the Secretary of the probable costs to the Special Risk Insurance Fund of further commitments to insure under this section, as measured by such factors as the current and projected rate and amount of claims payments, together with other significant current and projected costs as determined by the Secretary, including a review of the actual and projected monetary default rate (as measured by 90 day delinquencies) and the actual and projected rate of lease renewal through negotiation and arbitration.

[52 FR 48201, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988, as amended at 54 FR 32970-32971, Aug. 11, 1989]

§ 203.44 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subchapter or insured after the effective date of this subpart, subject to compliance with the requirements of this section.

(a) The proceeds of any open-end advance must be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) [Reserved]

(d) The mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in § 203.270. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner,

the terms and conditions upon which the advance will be insured.

(f) The amount of such advance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall:

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any such advance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided,* That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of §§ 203.18, 203.18a, 203.18b, or § 203.43.

(h) A mortgagee may amend or modify any mortgage meeting the requirements of § 203.17(a)(2) by adding such provisions as it deems necessary for the purposes of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee will have the sole responsibility for determining that any mortgage amended by an "open-end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

[36 FR 24508, Dec. 22, 1971, as amended at 45 FR 30603, May 8, 1980; 45 FR 76378, Nov. 18, 1980; 47 FR 29525, July 7, 1982; 47 FR 30752, July 15, 1982; 48 FR 28804, June 23, 1983; 53 FR 34282, Sept. 6, 1988]

§ 203.45 Eligibility of graduated payment mortgages.

A mortgage containing provisions for varying rates of amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(a) The mortgage may provide that any interest which accrues and which is unpaid pursuant to a financing plan approved by the Secretary, shall be added to the principal obligation of the mortgage.

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(c) The mortgage amount shall not exceed the lesser of:

(1) The limits prescribed by §§ 203.18, 203.18a, 203.18b and 203.29 or,

(2) An amount which, when added to all accrued mortgage interest which will be unpaid pursuant to a financing plan approved by the Secretary, shall not exceed 97 percent of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance. However, if the mortgagor is a veteran, the mortgage amount, when added to all accrued mortgage interest which will be unpaid pursuant to a financing plan approved by the Secretary, shall not exceed the applicable limits prescribed for veterans in § 203.18(a).

(d) The mortgage must contain complete amortization provisions satisfactory to the Secretary requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Secretary. The sum of the payments to principal and/or interest may increase annually for a period of five years at a rate of 2½ percent, 5 percent or 7½ percent or for a period of ten years at a rate of 2 per-

cent or 3 percent. Any required increase in payments shall occur on the anniversary date of the beginning of amortization. On the termination of the period of annual increases of payments, the sum of the payments to principal and interest in each month shall be substantially the same.

(e) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(f) Sections 203.21 and 203.44 shall not apply to this section.

(g) This section shall not apply to a mortgage that meets the requirements of §§ 203.18 (c) (d), (e) or (f), 203.43, 203.43a, 203.43j, or 203.49.

(h) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 245 of the National Housing Act.

[41 FR 42949, Sept. 29, 1976, as amended at 45 FR 33966, May 21, 1980; 45 FR 56341, Aug. 24, 1980; 49 FR 19453, 19458, May 8, 1984; 49 FR 23584, June 6, 1984; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988]

§ 203.47 Eligibility of growing equity mortgages.

A mortgage containing provisions for accelerated amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart, subject to compliance with the additional requirements of this section.

(a) The mortgage must contain complete amortization provisions, satisfactory to the Secretary, requiring monthly payments by the mortgagor not in excess of the mortgagor's reasonable ability to pay, as determined by the Secretary.

(b) The mortgage must contain a provision setting forth the payments required for principal and interest in each year of the mortgage.

(c) The monthly payments for principal and interest for the initial year, or such other initial period as the commissioner may approve, shall be determined on the basis of a 30-year level payment amortization schedule. Subsequent monthly payments for principal and interest may increase annually, biennially or at such other interval that is greater than one year, as the Commissioner may approve. The subsequent periodic increases may be up to five percent above the payments for principal and interest for the previous period.

(d) No later than at the time that a loan application is offered to a prospective mortgagor, the mortgagee shall explain fully to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(e) The mortgage amount shall not exceed the limits prescribed by § 203.18, § 203.18a. § 203.18b or § 203.29.

(f) Sections 203.21 and 203.44 shall not apply to this section.

(g) This section shall not apply to a mortgage which meets the requirements of § 203.43, § 203.43a, or § 203.49.

(h) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 245(a) of the National Housing Act.

[49 FR 19453, May 8, 1984, as amended at 49 FR 23584, June 6, 1984; 53 FR 8881, Mar. 18, 1988]

§ 203.49 Eligibility of adjustable rate mortgages.

A mortgage containing the provisions for periodic adjustments by the mortgagee in the effective rate of interest charged shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section. This section shall apply only to mortgage loans described under sections 203(b) and 203(k) of the National Housing act.

(a) *Interest-rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. The weekly average yields are published in the *Federal Reserve Bulletin* and made available by the U.S. Treasury Department in Statistical Release H. 15 (519). Except as otherwise provided in this

section, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

(b) *Amortization provisions.* The mortgage must contain amortization provisions satisfactory to the Secretary, allowing for periodic adjustments in the rate of interest charged corresponding to changes in the interest rate index.

(c) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the mortgagor's first debt service payment. To set the new interest rate, the mortgagee will determine the change between the initial (i.e., base) index figure and the current index figure, or will add a specified margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(d) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the mortgagor's monthly payments.

(e) *Magnitude of changes.* The adjustable rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the mortgagor. Subsequent adjustments to this interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(1) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(2) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, except that the mortgage may provide for minimum interest rate change limitations and for minimum increments of interest rate changes.

(f) *Pre-loan disclosure.* The mortgagee shall explain fully and in writing to the mortgagor, no later than on the date upon which the mortgagee provides the (prospective) mortgagor with a loan application, the nature of the obligation taken. The mortgagor shall certify that he or she fully understands the obligation. Such mortgagee disclosure must include the following items:

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(2) Identification of the interest rate index, its source of publication and availability;

(3) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment;

(4) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(g) *Annual disclosure.* At least 25 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the mortgagor of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated.

(h) *Cross-reference.* Sections 203.21 (level payment amortization provisions) and 203.44 (open-end advances) shall not apply to this section. This section shall not apply to a mortgage that meets the requirements of §§ 203.18(c) (non-occupant owners), 203.18(d) (outlying area properties), 203.18(e) (disaster victims), 203.43 (miscellaneous type mortgages), 203.43c (mortgages involving a dwell-

ing unit in a cooperative housing development), 203.43d (mortgages in certain communities), 203.43e (mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), and 203.47 (growing equity mortgages).

(i) *Aggregate amount of mortgages insured.* The aggregate number of mortgages insured pursuant to this section and § 234.79 of this chapter in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Commissioner under title II of the Act during the preceding fiscal year.

(j) *Insurance authority.* Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 251 of the National Housing Act.

[49 FR 23584, June 6, 1984, as amended at 53 FR 8881, Mar. 18, 1988; 54 FR 111, Jan. 4, 1989]

§ 203.50 Eligibility of rehabilitation loans.

A rehabilitation loan which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under section 203(k) of the National Housing Act.

(a) For the purpose of this section:

(1) The term 'rehabilitation loan' means a loan, advance of credit, or purchase of an obligation representing a loan or advancement of credit, made for the purpose of financing:

(i) The rehabilitation of an existing one-to-four unit structure which will be used primarily for residential purposes;

(ii) The rehabilitation of such a structure and refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located; or

(iii) The rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; and

(2) The term 'rehabilitation' means the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary and improvements for accessibility to the handicapped) or repair of a structure, or facilities in connection with a structure, and may include the provision of such sanitary or other facilities as are required by applicable codes, a community development plan, or a statewide property insurance plan to be provided by the owner or tenant of the project.

(b) The provisions of § 203.18 (except as otherwise provided in paragraphs (f) (1) and (2) of this section) and § 203.43c shall not apply to loans insured under this section.

(c) The loan shall cover a dwelling which was completed more than one year preceding the date of the application for mortgage insurance and which was approved for mortgage insurance prior to the beginning of rehabilitation.

(d) (1) The buildings on the mortgaged property must, upon completion of rehabilitation, conform with standards prescribed by the Secretary.

(2) Improvements or repairs made under this section must be designed to meet cost-effective energy conservation standards prescribed by the Secretary.

(e) The loan transaction shall be an acceptable risk as determined by the Commissioner.

(f) The loan shall not exceed an amount which, when added to any outstanding indebtedness of the borrower which is secured by the property, creates an outstanding indebtedness in excess of the lesser of:

(1) The limits prescribed in §§ 203.18 (a) (1) and (3), (c), 203.18a, and 203.18b, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation, or

(2) The limits prescribed in §§ 203.18 (a) (1) and (3), (c), 203.18a, and 203.18b, based upon 110 percent of the Commissioner's estimate of value of the property after rehabilitation.

(g) The loan limitation prescribed by paragraph (f)(2) of this section shall not be applicable where a unit of local government demonstrates to the satisfaction of the Commissioner that:

(1) The property is located within an area which is subject to a community sponsored program of concentrated redevelopment or revitalization, and,

(2) The loan limitation prescribed by paragraph (f)(2) of this section, pre-

vents the utilization of the program to accomplish rehabilitation in the subject area, and,

(3) The interests of the mortgagor and the Commissioner are adequately protected.

(h) The Commissioner may issue a commitment for the insurance of advances made during rehabilitation or for insurance upon completion of rehabilitation.

(i) Rehabilitation loans which do not involve the insurance of advances, the refinancing of outstanding indebtedness or the purchase of the property need not be a first lien on the property but shall not be junior to any lien other than a first mortgage. The provisions of §§ 203.15, 203.19, 203.23, 203.24, 203.26, and 203.43j shall not be applicable to such loans.

(j) The Commissioner may insure advances made by the mortgagee during rehabilitation if the following conditions are satisfied:

(1) The mortgage shall be a first lien on the property.

(2) The mortgagor and the mortgagee shall execute a rehabilitation loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made.

(3) The advances shall be made as provided in the commitment.

(4) The principal amount of the mortgage shall be held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor pending advancement to the mortgagor or his creditors as provided in the rehabilitation agreement.

(5) The loan shall bear interest at the rate prescribed in § 203.20 on the amount advanced to the mortgagor or his creditors and the amount held in an account or trust for the benefit of the mortgagor.

[45 FR 33966, May 21, 1980, as amended at 45 FR 76378, Nov. 18, 1980; 50 FR 19926, May 13, 1985; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988]

Waivers

§ 203.248 Waivers.

The Secretary in an individual case may waive any requirement of this subpart (except §§ 203.1 through 203.9) not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35958, Aug. 18, 1982]

Effective Date

§ 203.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations

Definitions

§ 203.251 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Mortgage" is defined at § 203.17(a)(1).

(e) "Mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) "Mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g)-(h) [Reserved]

(i) "Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument for insurance by the Commissioner.

(j) "Contract of Insurance" means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart and the applicable provisions of the Act.

(k) "MIP" means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

(l)-(m) [Reserved]

(n) "Open-end advance" means an insured advance made by an approved mortgagee in connection with a previously insured mortgage, pursuant to an open-end provision in the mortgage.

(o) "Open-end insurance charge" means the charge paid by the mortgagee to the Commissioner in consideration of the insurance of an open-end advance.

(p) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(q) "Maturity" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(r) "Debentures" means registered, transferable securities which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

(s) "State" includes the several States, Puerto Ricoe, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 8661, Apr. 29, 1972; 41 FR 49734, Nov. 10, 1976; 49 FR 12697, Mar. 30, 1984; 53 FR 34282, Sept. 6, 1988]

Endorsement and Contract of Insurance

§ 203.255 Insurance of mortgage.

(a) Upon compliance with a commitment, the Secretary will insure the loan and will provide evidence of the insurance by the issuance of a Mortgage Insurance Certificate.

(b) For applications involving mortgages originated under the single family Direct Endorsement program, if the mortgagee submits to the Secretary within 30 days after the date of closing of the loan, or such additional time as permitted by the Secretary, the documentation required by § 200.163, for mortgages insured under those sections of the National Housing Act specified in § 200.163 and certifies that the principal amount of the loan has been disbursed to the mortgagor or for the mortgagor's account, the Secretary will insure the loan and evidence the insurance by the issuance of a mortgage insurance certificate. After this endorsement, the mortgagee is entitled to the benefits of insurance subject to compliance with the regulations which are, in effect, a part of the insurance contract.

[48 FR 11940, Mar. 22, 1983]

§ 203.256 Insurance of open-end advance.

Insurance on an open-end advance will be evidenced by delivery of a certificate stating the amount of the advance, the date of insurance, and the regulations under which the advance is insured.

§ 203.257 Contract created by Mortgage Insurance Certificate or by endorsement.

The mortgage, including any open-end advances made thereunder and approved by the Commissioner, shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate or from the date of the endorsement of the credit instrument. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this subpart with the same force and to the same extent

as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

[36 FR 24508, Dec. 22, 1971, as amended at 41 FR 49734, Nov. 10, 1976]

§ 203.258 Assumption with or without release of mortgagor.

The mortgagee may effect the release of a mortgagor from personal liability on a mortgage note while retaining the benefits of insurance under this part if it obtains the Secretary's approval of a substitute mortgagor (assumptor) who assumes personal liability and agrees to pay the mortgage debt.

[41 FR 49734, Nov. 10, 1976]

Mortgage Insurance Premiums—In General

§ 203.259 Method of payment of MIP.

The payment of any MIP under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures at par plus accrued interest.

[48 FR 28805, June 23, 1983]

§ 203.259a Scope.

(a) The Commissioner shall charge a one-time MIP pursuant to § 203.280 for mortgages that (1) are insured pursuant to § 203.43i or (2)(i) are obligations of the Mutual Mortgage Insurance Fund under this part (except insured open-end advances as provided by § 203.270) and (ii) are insured pursuant to, as appropriate:

(A) An application for a conditional commitment received on or after September 1, 1983; or

(B) An application for mortgage insurance endorsement under the single family Direct Endorsement program as provided in § 203.255, where the property appraisal report is signed by the mortgagee's approved underwriter on or after September 1, 1983.

(b) The periodic MIP provisions of §§ 203.260 through 203.268 shall not apply to mortgages referred to in paragraph (a) of this section, except that the Commissioner shall have discretion to reinstitute use of the periodic MIP, during such period as the Commissioner may find it appropriate, if the Commissioner determines that use of the one-time MIP would not be consistent with sound financial and actuarial practice or would significantly increase financial burdens on mortgagors. Any such reinstitution of the periodic MIP, as well as any subsequent reinstitution of the one-time MIP, shall apply only with respect to mortgages insured pursuant to applications for conditional commitments received (or, in the case of the single family Direct Endorsement program, applications for mortgage insurance endorsement, where the property appraisal report is signed by the mortgagee's approved underwriter) after such date as the Commissioner shall specify.

[53 FR 8881, Mar. 18, 1988]

Mortgage Insurance Premiums—Periodic Payment

§ 203.260 Amount of mortgage insurance premium (periodic MIP).

The mortgagee shall pay to the Commissioner an initial MIP in an amount equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the first year of amortization. After payment of the initial MIP, the mortgagee shall pay to the Commissioner an amount equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the 12-month period preceding each subsequent anniversary date of the beginning of amortization.

[48 FR 28805, June 23, 1983]

§ 203.261 Calculation of periodic MIP.

The amount of any periodic MIP shall be calculated in accordance with the original amortization provisions of the mortgage, without taking into account delinquent payments, prepayments, agreements to postpone payments, or agreements to recast the mortgage.

[48 FR 28805, June 23, 1983]

§ 203.262 Due date of periodic MIP.

The full initial and each annual MIP shall be due on the anniversary date of the beginning of amortization.

[48 FR 28805, June 23, 1983]

§ 203.263 Adjustment of initial MIP.

If the Mortgage Insurance Certificate was issued prior to the beginning of amortization, the initial MIP shall be adjusted to include an additional premium from the date of issuance of the Mortgage Insurance Certificate to the date of the beginning of amortization. If the Mortgage Insurance Certificate was issued in the second half of the amortization year, the initial MIP shall be adjusted to include only that part of the premium year from the date of the issuance of the Mortgage Insurance Certificate to the first anniversary date of the beginning of amortization.

[48 FR 28805, June 23, 1983]

§ 203.264 Payment of periodic MIP.

(a) *Time of payment.* Any portion of the periodic MIP received by the mortgagee from the mortgagor on or after September 1, 1982 shall be paid to the Commissioner on or before the tenth day of the month following the month in which it was received, provided that the full initial or annual MIP shall be due on the anniversary date of the beginning of amortization and payable not later than ten days after such date even if not collected by the mortgagee from the mortgagor.

(b) *Payment of outstanding MIP.* All MIPs that have been collected by mortgagees from mortgagors prior to September 1, 1982, but not remitted pursuant to an annual HUD billing shall be remitted to the Commissioner not before September 1, 1982, but not later than September 10, 1982. All annual MIP bills received by mortgagees from HUD prior to September 1, 1982, shall be paid on their specified due dates.

[48 FR 28805, June 23, 1983]

§ 203.265 Mortgagee's late charge and interest.

(a) Periodic MIP which are remitted to the Commissioner after the payment dates precribed by §§ 203.262 and 203.264 shall include a late charge of four percent of the amount paid.

(b) In addition to the late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any periodic MIP which are remitted to the Commissioner more than 20 days after the payment dates prescribed in § 203.264. Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

[48 FR 28805, June 23, 1983]

§ 203.266 Period covered by periodic MIP.

The initial MIP shall cover the period beginning with the date of the issuance of a Mortgage Insurance Certificate and ending on the next anniversary of the beginning of amortization. Subsequent premium payments shall cover the twelve-month period preceding each subsequent anniversary date.

[48 FR 28805, June 23, 1983]

§ 203.267 Duration of periodic MIP.

The mortgagee shall pay the MIP to the Commissioner until the deed to the Commissioner is filed for record or the contract of insurance is terminated.

[48 FR 28805, June 23, 1983]

§ 203.268 Pro rata payment of periodic MIP.

(a) If the insurance contract is terminated before the due date of the initial MIP, the mortgagee shall pay a portion of the MIP prorated from the following dates to the date of termination:

(1) From the beginning of amortization if the Mortgage Insurance Certificate is issued in the first half of the amortization year, or

(2) From the date of the issuance of the Mortgage Insurance Certificate if the Certificate is issued at any time prior to the beginning of amortization or during the second half of the amortization year.

(b) If the insurance contract is terminated after the due date of the initial MIP, the mortgagee shall pay a portion of the current annual MIP

prorated from the due date of the last annual MIP to the date of termination.

(c) A pro rata MIP shall not be due or payable where the mortgagee notifies the Commissioner that foreclosure or other action to acquire the property has been completed and that the property will not be conveyed to the Commissioner in exchange for insurance benefits. Any MIP due and paid after the institution of foreclosure or the date the property was otherwise acquired by the mortgagee will be refunded to the mortgagee upon receipt by the Commissioner of the notice from the mortgagee that the property will not be conveyed to the Commissioner.

[48 FR 28805, June 23, 1983]

Open-end Insurance Charges—All Mortgages

§ 203.270 Open-end insurance charges.

(a) *Required charge.* In the case of an insured open-end advance the mortgagee shall pay to the Commissioner an open-end insurance charge.

(b) *Payment of charge for mortgages with periodic MIP.* The amount of any insured open-end advance shall be added to the average outstanding principal obligation of the mortgage for the purpose of determining the amount of periodic MIP as provided in §§ 203.260 through 203.268, except that the initial additional charge shall be prorated to cover the period beginning with the first day of the month following the issuance of a certificate evidencing the insurance of the open-end advance and ending on the due date of the next MIP.

(c) *Payment of charge for mortgages with one-time MIP.* In the case of a mortgage with a one-time MIP pursuant to § 203.280, the insurance charge shall be in an amount equal to ½ percent per annum of the outstanding principal obligation of the open-end advance. Sections 203.260 through 203.268 shall apply to the open-end charge on a mortgage with a one-time MIP, except that all references to amortization dates shall refer to amortization dates of the open-end advance, references to MIP shall refer to the open-end insurance charge, and references to outstanding principal obligation of the mortgage shall refer to outstanding principal obligation of the open-end advance.

(d) *Method of payment—all mortgages.* The payment of any open-end insurance charge under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures issued by the Mutual Mortgage Insurance Fund at par plus accrued interest.

[48 FR 28806, June 23, 1983]

Mortgage Insurance Premiums—One-Time Payment

§ 203.280 One-time MIP.

For mortgages for which a one-time MIP is to be charged in accordance with § 203.259c, the mortgagee shall, within fifteen days of closing and as a condition to the endorsement of the mortgage for insurance, pay to the Commissioner for the account of the mortgagor, in a manner prescribed by the Commissioner, a premium representing the total obligation for the insuring of the mortgage by the Commissioner.

(Approved by the Office of Management and Budget under control number 2535-0089)

[48 FR 28806, June 23, 1983]

§ 203.281 Calculation of one-time MIP.

(a) The applicable premium percentage determined under paragraph (b) of this section assumes, for purposes of calculation, that the entire amount of the one-time MIP is added to the loan amount. The amount of the one-time MIP shall be determined by multiplying the loan amount otherwise insurable under this part by the applicable premium percentage, subject to adjustment for the portion of the MIP, if any, that is not to be included in the insured mortgage.

(b)(1) The Commissioner shall determine the applicable premium percentage in accordance with sound financial and actuarial practice, taking into account the mortgage term and the costs projected by the Commissioner to be payable out of the reserves of the Mutual Mortgage Insurance Fund, discounted at a rate of interest deter-

mined by the Commissioner, but not to exceed the interest rate specified in the mortgage. For purposes of this determination: (i) Costs shall include insurance claim losses, salaries and expenses attributable to the Fund, and refunds of unearned premiums pursuant to § 203.283, and (ii) the discount rate shall equal the rate of return expected to be earned by investment of the reserves to the Fund.

(2) Application of the premium percentage determined under paragraph (b)(1) of this section shall not result in a MIP in excess of an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments.

(c) The applicable premium percentage will be published by notice at least annually in the FEDERAL REGISTER.

[48 FR 28806, June 23, 1983]

§ 203.282 Mortgagee's late charge and interest.

(a) Payment of one-time MIP is late if it is not received by HUD by the fifteenth day after closing. Late payment shall include a late charge of four percent of the amount of the MIP.

(b) If payment of the MIP is not received by HUD within 30 days after closing, the mortgagee will be charged additional late fees until payment is received at an interest rate set in conformity with the Treasury Fiscal Requirements Manual.

[48 FR 28806, June 23, 1983]

§ 203.283 Refund of one-time MIP.

(a) The Commissioner shall provide for the refund to the mortgagor of a portion of the unearned MIP paid pursuant to § 203.280 if the contract of insurance covering the mortgage is terminated:

(1) By coveyance to one other than the Commissioner and a claim for the insurance benefits is not presented for payment (§ 203.315),

(2) By prepayment of the mortgage (§ 203.316), or

(3) By voluntary agreement with the approval of the Commissioner (§ 203.317).

(b) The Commissioner shall determine the amount of the premium refund by multiplying the amount the premium paid at the time the mortgage was insured by the applicable premium refund percentage for mortgages insured in the year the mortgage was endorsed for insurance. The Commissioner shall determine the applicable premium refund percentage for each year in an equitable manner and in accordance with sound financial and actuarial practice, taking into account: (1) Projected salaries and expenses, (2) prospective losses generated by insurance claims, and (3) expected future payments of premium refunds.

[48 FR 28806, June 23, 1983, as amended at 52 FR 1327, Jan. 13, 1987]

ADJUSTED MORTGAGE INSURANCE PREMIUM

§ 203.288 Discontinuance of adjusted premium charge.

Notwithstanding any provision in the mortgage instrument, there shall be no adjusted mortgage insurance premium due the Commissioner on account of the prepayment of any mortgage on or after May 1, 1972.

[37 FR 8662, Apr. 29, 1972]

VOLUNTARY TERMINATION

§ 203.295 Voluntary termination.

Upon request by the mortgagor and mortgagee the Commissioner may terminate the insurance contract on any mortgage under this part covering a 1-to-4 family residence. The mortgagee shall cancel the insurance endorsement on the mortgage insurance certificate or note upon receipt of notice from the Commissioner that the contract of insurance is terminated. Notwithstanding any provision in a mortgage instrument, there shall be no voluntary termination charge due the Commissioner on account of the voluntary termination of any mortgage insurance contract where the request for termination is received by the Commissioner on or after May 1, 1972.

[37 FR 8662, Apr. 29, 1972]

TERMINATION OF INSURANCE CONTRACT

§ 203.315 Termination by conveyance to other than Commissioner.

(a) For those mortgages to which the provisions of § 203.368 apply, the contract of insurance shall be terminated under the following circumstances:

(1) The mortgagee notifies the Commissioner that it will not convey title to the Commissioner and will not file a claim for the insurance benefits when:

(i) The mortgagee either acquires the property by any means, or

(ii) Acquires the property and gives such notice during the redemption period; or

(2) The mortgagee notifies the Commissioner that it will not file a claim for the insurance benefits when:

(i) The property is bid in and acquired at foreclosure by a party other than the mortgagee, or

(ii) After foreclosure of the mortgaged property by the mortgagee the property is redeemed.

(b) For those mortgages to which the provisions as set forth in § 203.368 do not apply, the contract of insurance shall be terminated under the following circumstances:

(1) The mortgagee acquires the mortgaged property but does not convey it to the Commissioner;

(2) The property is bid in and acquired at a foreclosure sale by a party other than the mortgagee;

(3) After foreclosure the property is redeemed;

(4) After foreclosure and during the redemption period the mortgagee gives notice that it will not tender the property to the Commissioner.

[52 FR 1327, Jan. 13, 1987]

§ 203.316 Termination by prepayment of mortgage.

The contract of insurance shall be terminated if the mortgage is paid in full prior to its maturity.

§ 203.317 Termination by voluntary agreement.

The contract of insurance shall be terminated if the mortgagor and mortgagee jointly request termination.

§ 203.318 Notice of termination by mortgagee.

No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 15 calendar days from the occurrence of one of the approved methods of termination set forth in this subpart.

[45 FR 31716, May 14, 1980]

§ 203.319 Pro rata payment of premiums and charges.

No contract of insurance shall be terminated until the mortgagee has paid to the Commissioner the pro rata portion of the current annual MIP or open-end insurance charge as set forth in this subpart.

[37 FR 8662, Apr. 29, 1972]

§ 203.320 Notice and date of termination by Commissioner.

The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination date shall be the last day of the month in which one of the following events has occurred:

(a)(1) For those mortgages to which the provisions of § 203.368 apply, the date foreclosure proceedings were instituted by the mortgagee, or the property was otherwise acquired by the mortgagee or a party other than the mortgagee (including the mortgagor or other party as redemptor) if the mortgagee notifies the Commissioner that title will not be conveyed to the Commissioner and a claim for the insurance benefits will not be presented for payment.

(2) For those mortgages to which the provisions of § 203.368 do not apply, the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee, if the mortgagee notifies the Commissioner that title will not be conveyed to the Commissioner.

(b) The date the mortgage was prepaid in full.

(c) The date a voluntary termination request is received by the Commissioner.

[36 FR 24508, Dec. 22, 1971, as amended at 52 FR 1327, Jan. 13, 1987]

§ 203.321 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent periodic MIP or open-end insurance charge shall cease and all rights of the mortgagor and mortgagee shall be terminated, except as otherwise provided in this part.

[48 FR 28807, June 23, 1983]

Default Under Mortgage

§ 203.330 Delinquency and default.

A mortgage account is delinquent any time a payment is due and not paid. If the mortgagor fails to make any payment, or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this part.

[41 FR 49734, Nov. 10, 1976]

§ 203.331 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after—

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) The first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 203.332 Notice of delinquency.

Once each month the mortgagee shall report or cause to be reported all mortgages insured under this Part which are 90 or more days delinquent and concerning the status of all mortgages which were reported as 90 or more days delinquent the previous month. Such reports shall be made on a form approved by the Commissioner.

[41 FR 49734, Nov. 10, 1976]

§ 203.333 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred, provided the mortgagor pays to the mortgagee such expenses as the mortgagee has incurred in connection with the foreclosure proceedings and the mortgagee gives written notice of reinstatement to the Commissioner.

Continuation of Insurance

§ 203.340 Special forbearance.

(a) If the conditions of § 203.614 are met and special forbearance relief is granted pursuant to that section, the contract of insurance shall continue in force except as otherwise provided in this subpart.

(b) The contract of insurance shall continue in force, except as otherwise provided in this subpart, when the conditions of this section which were effective prior to January 1, 1977, have been met and special forbearance relief is granted pursuant thereto prior to January 1, 1977.

[41 FR 49735, Nov. 10, 1976]

§ 203.342 Recasting of mortgage.

(a) If the conditions of § 203.616 are met and a mortgage is recast pursuant to that Section, the contract of insurance in force shall continue except as otherwise provided in this subpart.

(b) The contract of insurance shall continue in force, except as otherwise provided in this part, when the conditions of this section which were effective prior to January 1, 1977, have been met and a mortgage has been recast pursuant thereto prior to January 1, 1977.

(c) When a mortgage is recast, the principal amount of the mortgage, as modified, shall be considered to be the "original principal of the mortgage" as that term is used in § 203.401.

[41 FR 49735, Nov. 10, 1976]

§ 203.343 Partial release, addition or substitution of security.

(a) Except as provided in § 203.389(n), a mortgagee shall not release the security or any part thereof, while the mortgage is insured, without the prior consent of the Commissioner.

(b) A mortgagee may, with the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot under the following conditions:

(1) The mortgagee obtains a good and valid first lien on the property to which the dwelling is removed.

(2) All damages to the structure are repaired without cost to HUD.

(3) The property to which the dwelling is removed is in an area known to be reasonably free from natural hazards or, if in a flood zone, the mortgagor will insure or reinsure under the Federal Flood Insurance Program.

(c) A mortgagee may, without the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot under the following conditions.

(1) The dwelling has survived an earthquake or other disaster with little damage, but continued location on the property might be hazardous.

(2) The conditions stated in paragraph (b) of this section exist.

(3) Immediately following the emergency removal the mortgagee notifies the Commissioner of the reasons for removal.

[41 FR 49735, Nov. 10, 1976]

Forbearance Relief for Military Personnel

§ 203.345 Postponement of principal payments—mortgagors in military service.

In addition to the special forbearance relief afforded by §§ 203.340 through 203.342, if the mortgagor is a person in the military service (as defined in the Soldiers' and Sailors' Civil Relief Act of 1940), the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service and three months thereafter any part of the monthly payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the mortgage debt within the maturity as provided in the original mortgage. The agreement shall in no way affect the amount of the annual MIP which will continue to be calculated in accordance with the original amortization provisions of the mortgage.

§ 203.346 Postponement of foreclosure—mortgagors in military service.

If at any time during default the mortgagor is a "Person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which he is in such service shall be excluded in computing the one-year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this subpart. No postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

Assignment of Mortgage

Effective Date Note (1): The text of § 203.350 set forth below remains in effect until further notice (a correction document published at 53 FR 13404, Apr. 25, 1988, has been incorporated into the text of this section). See 52 FR 6914, Mar. 5, 1987.

§ 203.350 Assignment of defaulted mortgage.

(a) *In general.* The Secretary will accept an assignment of any mortgage covering a one-to-four family residence if the Secretary finds that the criteria for acceptance of an assignment under § 203.650 have been satisfied.

(b) *Assignments pursuant to section 248, National Housing Act.* Notwithstanding the provisions of paragraph (a), the Commissioner shall, upon application by the mortgagee, approve the assignment to the Commissioner of any mortgage insured pursuant to section 248 of the National Housing Act (see § 203.43h) where the mortgagor has been in default for more than 90 days. The mortgagee may not request the Commissioner to accept an assignment until the mortgagee has submitted documents to the Commissioner showing that the requirements of § 203.604 have been met. HUD shall

then notify the mortgagee of its approval of the mortgagee's actions under § 203.604 and that the mortgagee may assign the mortgage to the Secretary, or HUD will specify what further action the mortgagee must take to meet the requirements of § 203.604.

(c) *Assignment of mortgages insured pursuant to section 247, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept an assignment of any mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part) where the mortgagor has been in default for more than 180 days, provided that the requirements of § 203.665 are satisfied.

(d) *Assignment of mortgages authorized by section 203(q), National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept assignment of any mortgage authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) if

(1) The mortgagor has been in default for more than 90 days for failure to make a monthly payment,

(2) The requirements of § 203.666 are satisfied, and

(3) The date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

If the default is non-monetary, the date of default occurs prior to an action described in paragraph (d)(3) of this section, the requirements of § 203.666 are satisfied, and the mortgagor has been in default for more than 30 days, the Secretary may in his or her discretion, upon application by the mortgagee, agree to accept an assignment of the mortgage. If the leasehold estate has terminated before the mortgage has been assigned, or title to the property conveyed, to the Secretary, and the mortgage is in default for any reason for more than 30 days, the Secretary will, upon application by the mortgagee, agree to accept an assignment of the mortgage.

(e) *Filing assignment for record.* Within 30 days of the Secretary's written agreement to accept assignment of a defaulted mortgage, or within such additional time as the Secretary authorizes in writing, the mortgagee must file the assignment for record.

(The information collection requirements in paragraph (b) are approved by the Office of Management and Budget under control number 2502-0169)

[51 FR 21872, June 16, 1986, as amended at 52 FR 48202, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988; 53 FR 13404, Apr. 25, 1988; 55 FR 282, Jan. 4, 1990]

EFFECTIVE DATE NOTE (2): At 55 FR 283, Jan. 4, 1990, § 203.350(e) was added. The approval number will be published separately in the FEDERAL REGISTER with a notice of effectiveness of this rule.

ASSIGNMENT OF MORTGAGE

EFFECTIVE DATE NOTE (3): Section 203.350 was revised at 52 FR 6914, Mar. 5, 1987. Before this rule becomes effective, the Department must revise its current mortgage assignment handbook, HUD Handbook 4330.2, to reflect the changes made by this rule. Additionally, the Department must select a contractor to administer the payments system. The rule will be made effective as soon as the Department accomplishes these tasks, and an announcement of the effective date will be published in the FEDERAL REGISTER at least 30 days before the effective date.

§ 203.350 Assignment of defaulted mortgage.

(a) *In general.* The Secretary will accept an assignment of any mortgage covering a one-to-four family residence if the Secretary finds that the criteria for acceptance of an assignment under § 203.645 have been satisfied.

(b) *Assignments pursuant to section 248, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept assignment of any mortgage insured pursuant to section 248 of the National Housing Act (§ 203.43h of this part) where the mortgagor has been in default for more than 90 days, provided that the requirements of § 203.664 are satisfied.

(c) *Assignment of mortgages insured pursuant to section 247, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept an assignment of any mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part) where the mortgagor has been in default for more than 180 days, provided that the requirements of § 203.665 are satisfied.

(d) *Filing assignment for record.* Within 30 days of the Secretary's written agreement to accept assignment of a defaulted mortgage, or within such additional time as the Secretary authorizes in writing, the mortgagee must file the assignment for record.

(The information collection requirements in paragraphs (b) and (c) are approved by the Office of Management and Budget under control number 2502–0169)

[52 FR 6914, Mar. 5, 1987]

§ 203.351 Application for insurance benefits and fiscal data.

On the date the assignment of the mortgage is filed for record, the mortgagee shall forward to the Commissioner the prescribed application for insurance benefits and fiscal data pertaining to the mortgage transaction, together with the receipts covering all disbursements, as required by the fiscal data form. In addition, the following requirements shall be met:

(a) *Items to be included with application.* The following items shall be forwarded to the Commissioner with the application:

(1) *Credit and security instrument.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage.

(2) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available, a copy shall be furnished and the original forwarded as soon as possible.

(3) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee.

(4) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(5) *Property.* All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee).

(6) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction.

(7) *Additional information.* Any additional information or data which the Commissioner may require.

(8) *Title evidence.* All title evidence held by the mortgagee. It need not be extended to include the recordation of the assignment. If a mortgagee's title policy is furnished, the Commissioner shall be a named insured under such policy.

(b) *Items to be retained by mortgagee.* The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

(c) Title evidence for mortgages insured under § 203.43d as set forth in § 203.385 shall accompany the application for insurance benefits.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 7693, Apr. 10, 1972; 42 FR 57435, Nov. 2, 1977]

§ 203.353 Certification by mortgagee.

At the time of assignment of the mortgage, the mortgagee shall certify to the Commissioner that:

(a) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner;

(b) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(c) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

Claim Procedure

§ 203.355 Acquisition of property.

With respect to defaulted mortgages on property located on Indian land insured pursuant to section 248 of the National Housing Act (§ 203.43h of this part), the mortgagee shall comply with §§ 203.350(b) and 203.664 of this part. With respect to defaulted mortgages on property located on Hawaiian home lands insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part), the mortgagee shall comply with §§ 203.350(c) and 203.665 of this part. With respect to defaulted mortgages on property located on the Allegany Reservation of the Seneca Nation of Indians authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) the mortgagee shall comply with §§ 203.350(d) and 203.666 of this part, provided that the mortgagor and the lessor have not executed a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by arbitration award. With respect to all other mortgages, including mortgages authorized by section 203(q) if the preceding sentence is inapplicable, the mortgagee shall take one of the following actions within one year from the date of default, or within any additional time as is approved by the Secretary or is authorized by §§ 203.345, 203.346, or §§ 203.650 through 203.660.

(a) The mortgagee shall obtain a deed in lieu of foreclosure (see §§ 203.357, 203.389 and 203.402(f)) with title being taken in the name of the mortgagee or the Secretary;

(b) The mortgagee shall commence foreclosure; or

(c) If the laws of the State in which the mortgaged property is situated do not permit the commencement of foreclosure within one year from the date of default, the mortgagee shall commence foreclosure within sixty days after the expiration of the time during which such foreclosure is prohibited by such laws.

[41 FR 49735, Nov. 10, 1976, as amended at 52 FR 48202, Dec. 20, 1987; 53 FR 9869, Mar. 28, 1988; 53 FR 13404, Apr. 25, 1988]

§ 203.356 Notice of foreclosure.

The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

§ 203.357 Deed in lieu of foreclosure.

(a) *Mortgagors owning one property.* In lieu of instituting or completing a foreclosure, the mortgagee may acquire property from one other than a corporate mortgagor by voluntary conveyance from the mortgagor who certifies that he does not own any other property subject to a mortgage insured or held by FHA. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(1) The mortgage is in default at the time the deed is executed and delivered;

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage is satisfied of record as a part of the consideration for such conveyance;

(4) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title;

(5) The mortgagee transfers to the Commissioner good marketable title accompanied by satisfactory title evidence.

(b) *Corporate mortgagors.* A mortgagee may accept a deed in lieu of foreclosure from a corporate mortgagor in compliance with the requirements of paragraph (a) of this section, if the mortgagee obtains the prior written consent of the Commissioner.

(c) *Mortgagors owning more than one property.* The mortgagee may accept a deed in lieu of foreclosure in

compliance with the provisions of paragraph (a) of this section, from an individual who owns more than one property which is subject to a mortgage insured or held by the FHA if the mortgagee obtains the prior written consent of the Commissioner.

§ 203.358 Direct conveyance of property.

In acquiring the property or conveying the property to the Commissioner the mortgagee may arrange for the deed to be made directly to the Commissioner from the mortgagor or other grantor. The mortgagee shall be responsible for determining that such conveyance will comply with all of the provisions of this part conveying good marketable title and satisfactory title evidence.

§ 203.359 Time of conveyance to Commissioner.

After acquiring good marketable title to and possession of the property the mortgagee shall transfer the property to the Commissioner:

(a) Within 30 days after acquiring possession of the mortgaged property by foreclosure or other means; or

(b) Within such further time as may be necessary to complete the title examination and perfect the title.

§ 203.360 Notice of property transfer and application for insurance benefits.

On the date the deed is filed for record the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance and shall assign, without recourse or warranty any or all claims which the mortgagee has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which the mortgagee acquired or conveyed such property, except such claims as may have been released with the approval of the Commissioner.

§ 203.361 Acceptance of property by Commissioner.

Upon receipt of notice of property transfer the Commissioner shall accept title to and possession of the property as of the date of the filing for record of the deed to the Commissioner, subject to compliance with the regulations in this part.

§ 203.362 Conditions for withdrawal of application for insurance benefits.

With the consent of the Commissioner, a mortgagee may withdraw an application for insurance benefits if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and

(d) Reimburse the Commissioner for property expenditures as set forth in § 203.364.

§ 203.363 Reconveyance for noncompliance with regulations.

If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply or, in the alternative, the Commissioner may reconvey title to the property to the mortgagee in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insurance benefits at a subsequent date.

§ 203.364 Mortgagee's liability for property expenditures.

Where the Commissioner acquires a property and thereafter it becomes necessary for the Commissioner to reconvey the property to the mortgagee because of the mortgagee's noncompliance with these regulations or because, with the consent of the Commissioner, the application for insurance benefits is withdrawn, the mortgagee shall reimburse the Commissioner for all expenses incurred in connection with such acquisition and reconveyance. The reimbursement shall include all expenditures made from the date the deed to the Commissioner

was filed for record to the date of reconveyance of the property to the mortgagee, after appropriate adjustment on account of any income received from the property.

§ 203.365 Documents and information to be furnished Commissioner.

(a) *Items to be furnished Commissioner.* Within 45 days after the deed is filed for record, the mortgagee shall forward to the Commissioner:

(1) A copy of the deed to the Commissioner which has been filed for record and the title evidence continued so as to include recordation of the deed. The original deed shall be forwarded as soon as received from the recording authority.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Receipts covering all disbursements as required by the fiscal data form.

(4) Ledger cards covering the mortgage transaction.

(5) Any additional information or data which the Commissioner may require.

(b) *Items to be retained by mortgagee.* The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

§ 203.366 Conveyance of marketable title.

The mortgagee shall tender to the Commissioner a satisfactory conveyance of title and transfer of possession of the property. The deed or other instrument of conveyance shall convey good marketable title to the property, which shall be accompanied by title evidence satisfactory to the Commissioner.

§ 203.367 Contents of deed and supporting documents.

The deed and supporting accompanying documents shall be as follows:

(a) *Deed.* A deed conveying the property to the Federal Housing Commissioner. The deed shall:

(1) Contain covenants which warrant title against acts of the grantor, and all claiming by, through, or under said grantor, if the grantor is the mortgagee or mortgagor; if the grantor is a party other than the mortgagee or mortgagor, the special warranty covenants may be limited or amended to accord with the law of the particular jurisdiction.

(2) Recite nominal consideration, if such recital is adequate under the laws of the State in which the property is located or such other consideration as may be necessary to support the deed.

(b) *Maps or survey.* A map or diagram showing property location with reference to public streets or roads or a survey, if available. When a part of the property has been taken by condemnation proceedings or conveyance in lieu of condemnation, a map or diagram showing the part taken and the property remaining is required.

(c) *Credit documents.* The original credit and security instruments, if available or a deficiency judgment, if any, duly assigned or endorsed by the mortgagee, without recourse, to the Commissioner.

§ 203.368 Claims without conveyance procedure.

(a)(1) The requirements of this section apply to any insured mortgage subject to this subpart which was either insured pursuant to:

(i) A conditional commitment issued on or after November 30, 1983 or, as appropriate,

(ii) An application for mortgage insurance endorsement under the Single Family Direct Endorsement Program, as provided in § 203.255(b), where the property appraisal report was signed by the mortgagee's approved underwriter on or after November 30, 1983.

(2) The requirements of this section shall also apply to any other mortgages subject to this subpart where the mortgagee elects to provide the notice to HUD required by paragraph (d) of this section.

(b) Notwithstanding the provisions of paragraph (a) of this section, the requirements of this section do not apply if the mortgaged property has been damaged as set out in § 203.378.

(c) Nothing in this section shall affect any rights or obligations arising

under the procedures set forth in Subpart C of this part.

(d) After initiating proceedings to foreclose an insured mortgage within the coverage of paragraph (a)(1) of this section by judicial, statutory, or other means authorized by the mortgage instrument, the mortgagee shall furnish notice of the foreclosure to the Commissioner, containing such information as shall be prescribed by the Commissioner, together with a copy of the notice of sale, on or before the date of first publication, posting, or other notice. The mortgagee foreclosing an insured mortgage subject to this subpart and within the coverage of paragraph (a)(2) of this section may elect to become subject to this section by providing such notices to the Commissioner in accordance with the preceding sentence.

(e) Where notice of the foreclosure sale is provided pursuant to paragraph (d) of this section, the Commissioner may elect to cause the mortgaged property to be appraised and to give written notice to the mortgagee, not less than five days prior to the date of the foreclosure sale, of the Commissioner's estimate of the fair market value of the mortgaged property, less adjustments as the Commissioner may deem appropriate (which may include, without limitation, the Commissioner's estimate of holding costs and resale costs that would be incurred if title to the mortgaged property were conveyed to the Commissioner). Such amount is referred to hereafter as the "Commissioner's adjusted fair market value."

(f) If the Commissioner fails to provide notice of the Commissioner's adjusted fair market value to the mortgagee not less than five days prior to the scheduled date of foreclosure sale, this section shall have no further application and §§ 203.355 through 203.367 shall apply: *Provided*, that a mortgagee which receives the Commissioner's notice at any time prior to the foreclosure sale may waive late receipt by so notifying the Commissioner, in which case this section shall apply.

(g) If the Commissioner provides notice of the Commissioner's adjusted fair market value in accordance with paragraph (e) of this section the following shall be applicable:

(1) The mortgagee shall tender a bid at the foreclosure sale in the amount of the Commissioner's adjusted fair market value.

(2) If the mortgagee acquires title to the mortgaged property pursuant to a bid at foreclosure sale in an amount equal to the Commissioner's adjusted fair market value, the mortgagee may elect to retain title to the property and to file a claim for the insurance benefits computed as provided in § 203.401(b).

(3) If a party other than the mortgagee acquires title to the mortgaged property either pursuant to a bid at foreclosure sale or through the redemption of the property in an amount not less than the Commissioner's adjusted fair market value, the mortgagee may file a claim for the insurance benefits computed as provided in § 203.401(b).

(4) If the mortgagee acquires title to the mortgaged property pursuant to a bid at foreclosure sale in an amount in excess of the Commissioner's adjusted fair market value, the mortgagee is deemed to have elected to retain title to the property and is limited to filing a claim for the insurance benefits computed as provided in § 203.401(b). In the event the mortgagee can show good cause for having bid an amount in excess of the Commissioner's adjusted fair market value, the Commissioner may, at his discretion, waive the provisions of this subparagraph and allow the mortgagee to convey title to the Commissioner and file a claim for the insurance benefits computed as provided in § 203.401(a). A mortgagee which has elected to follow the provisions of this section pursuant to paragraph (a)(2) of this section and bids an amount in excess of the Commissioner's adjusted fair market value shall not be subject to the provisions of this subparagraph, and may elect to retain or convey title in filing a claim for the insurance benefits.

(5) In any other case, the mortgagee may file a claim for insurance benefits only upon conveyance of title to the mortgaged property to the Commissioner.

(h) If the Commissioner provides timely notice of the Commissioner's adjusted fair market value in accordance with paragraph (e), the Commissioner may require the mortgagee to advertise the upcoming sale in addition to the standard legal notices which may be required by state law.

(i) Where a mortgagee files a claim for the insurance benefits without conveying title to the property to the Commissioner, as authorized by this section:

(1) Sections 203.358 through 203.367 shall not be applicable.

(2) The mortgagee shall assign to the Commissioner, without recourse or warranty, any or all claims which the mortgagee has acquired in connection with the mortgage transaction and as a result of the foreclosure proceedings or other means by which the mortgagee or party other than the mortgagee acquired such property, except such claims as may have been released with the approval of the Commissioner.

(3) The mortgagee shall forward to the Commissioner:

(i) Fiscal data pertaining to the mortgage transaction;

(ii) The original credit and security instruments, if available, or a deficiency judgment, if any, duly assigned or endorsed by the mortgagee, without recourse, to the Commissioner; and

(iii) Any additional information or data which the Commissioner may require.

(4) The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which the mortgagee is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness. Cash amounts shall be itemized and deducted from the claim pursuant to § 203.403. Receipts for disbursements are to be retained by the mortgagee and are to be made available upon request by the Commissioner.

(5) The mortgagee shall file its claim:

(i) Within 30 days after the mortgagee acquired good marketable title to the property; or

(ii) Within 30 days after a party other than the mortgagee acquired good marketable title to the property; or

(iii) In redemption States, within 30 days after the mortgagor or another party redeemed the property or the redemption period has expired; or

(iv) Within such other time as may be determined by the Commissioner.

(6) In any case in which the insurance benefits paid include, pursuant to § 203.402(c), hazard insurance premiums paid by the mortgagee, the portion of the hazard insurance premium allocable to the period after acquisition of title by the mortgagee or a third party shall be deducted from the mortgage insurance benefits otherwise payable.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2502-0347)

[52 FR 1327, Jan. 13, 1987]

§ 203.369 Deficiency judgments.

(a) With respect to claims for insurance benefits filed in connection with mortgages insured pursuant to firm commitments issued on or after March 28, 1988, or pursuant to direct endorsement processing under §§ 200.163-200.164a of this chapter where the credit worksheet was signed by the mortgagee's approved underwriter on or after March 28, 1988, the Commissioner may, upon giving timely notice, require the mortgagee diligently to pursue a deficiency judgment in connection with the foreclosure and to assign the judgment to the Commissioner. In determining whether a deficiency judgment should be sought in connection with a single family foreclosure, the Commissioner will take the following factors into account:

(1) Whether the mortgagor has defaulted on one or more other HUD insured mortgages or loans, resulting in the payment of insurance claims;

(2) Whether the mortgagor treats its ownership as an investment and the mortgagor, or persons or entities with which it has been affiliated, have defaulted on one or more other FHA insured mortgages or loans, resulting in the payment of insurance claims;

(3) Whether it is feasible under State law to seek a deficiency judgment;

(4) The cost-effectiveness of seeking a deficiency judgment, considering, among other factors, the probable amount of the deficiency judgment obtainable, the additional costs attributable to seeking a deficiency judgment and the likelihood of successfully recovering on any judgment; and

(5) Such other factors as the Commissioner may determine appropriate. In cases where the Commissioner requires the pursuit of a deficiency judgment and provides the mortgagee with the Commissioner's estimate of the fair market value of the property, less adjustments, in accordance with § 203.368(e), the mortgagee shall tender a bid at the foreclosure sale in that amount, and shall take all other appropriate steps in accordance with State law to obtain a deficiency judgment.

(b) With respect to claims for insurance benefits filed in connection with mortgages insured pursuant to firm commitments issued before March 28, 1988, or pursuant to direct endorsement processing under §§ 200.163–200.164a of this chapter where the credit worksheet was signed by the mortgagee's approved underwriter before March 28, 1988, the Commissioner may, in accordance with the criteria set forth in paragraph (a) of this section and upon giving timely notice, request that the mortgagee diligently pursue a deficiency judgment in connection with the foreclosure. Any judgment obtained shall be assigned to the Commissioner.

(c) In cases where pursuit of a deficiency judgment is requested or required under this section, the Commissioner, where the Commissioner determines it appropriate under State law requirements, may extend the otherwise applicable period of time within which a deficiency judgment (and other claims against the mortgagor) and related credit documents must be assigned to the Commissioner under § 203.360, § 203.367 or § 203.368 of this subpart.

(d) In addition to meeting the requirements of § 203.356, in cases where the Commissioner determines it necessary because of State law requirements, the Commissioner may also require (or request, as the Commissioner may determine) the mortgagee to provide the Commissioner with notice of the mortgagee's intent to institute foreclosure proceedings a reasonable amount of time before proceedings are instituted, in order that the Commissioner may be able effectively to require or request the mortgagee, in appropriate cases, to seek a deficiency judgment.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2535-0093)

[53 FR 4387, Feb. 16, 1988]

Condition of Property

§§ 203.375—203.376 [Reserved]

§ 203.377 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part, is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such vacant or abandoned security property until its conveyance to the Commissioner, if such action does not constitute an illegal trespass.

[41 FR 49735, Nov. 10, 1976]

§ 203.378 Property condition.

(a) When the property is transferred, or a mortgage is assigned to the Commissioner, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) The mortgagee shall not be liable for damage to the property by waste in connection with mortgage insurance

claims paid on or after July 2, 1968. However, the mortgagee shall be responsible for damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377, as to all mortgages insured on or after January 1, 1977, but such responsibility shall not exceed the amount of its insurance claim as to a particular property.

[35 FR 34508, Dec. 22, 1971. Redesignated and amended at 41 FR 49735, Nov. 10, 1976]

§ 203.379 Adjustment for damage or neglect.

If the property has been damaged by fire, flood, earthquake or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(a) If the prior approval of the Commissioner is obtained, there will be deducted from the insurance benefits the Commissioner's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(b) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(1) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of (i) 100 percent of the insurable value of the improvements, or (ii) the principal loan balance of the mortgage; and

(2) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium; and

(3) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (b)(1) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

(4) The extent of coverage obtained by the mortgagee in accordance with paragraph (b)(3) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(5) The mortgagee took the actions that § 203.377 requires.

The certification requirements set out in § 203.379(b) of this part apply to any mortgage insured by HUD on or after September 22, 1980, for which a claim has not been filed before September 30, 1986. Any mortgage insured on or after September 22, 1980, for which a claim has been filed before September 30, 1986, but the claim has not been settled before that date, will be governed by § 203.379(b) (1986 Edition) as it existed immediately before September 30, 1986.

(c)(1) As used in this section, "reasonable rate" means a rate that is not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate.

(2) If a State has neither a FAIR Plan nor a State-licensed rating organization for essential property insurance in the voluntary market, the mortgagee must provide to the HUD Field Office having jurisdiction, information concerning the lowest rates available from an insurer for the types of coverage involved, with a request for a determination of whether the rate is reasonable. HUD will determine the rate to be reasonable if it approximates the rate assessed for compara-

ble insurance coverage applicable to similarly situated properties in a State that offers a FAIR Plan or maintains a State-licensed rating organization.

(Approved by the Office of Management and Budget under control number 2502-0349)

[51 FR 28551, Aug. 8, 1986, as amended at 54 FR 28053, July 5, 1989]

§ 203.380 Certificate of property condition.

The mortgagee shall either certify that as of the date of the filing of deed for record, or assignment of the mortgage to the Commissioner, the property was (a) undamaged by fire, flood, earthquake, or tornado, and (b) as to mortgages insured or for which commitments to insure are issued on or after January 1, 1977, undamaged due to failure of the mortgagee to take action as required by § 203.377, or its claim shall be accompanied by a copy of the Commissioner's authorization to convey the property in damaged condition. In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Commissioner as establishing the condition of the property, as of the date of the filing of the deed or assignment of the mortgage.

[36 FR 34508, Dec. 22, 1971, as amended at 41 FR 49736, Nov. 10, 1976]

§ 203.381 Occupancy of property.

The mortgagee shall certify that the property is vacant and contains no personal property as of the date of filing for record of the deed to the Secretary or that the Secretary has consented to accept the property occupied.

[45 FR 59563, Sept. 10, 1980]

§ 203.382 Cancellation of hazard insurance.

The mortgagee shall cancel any hazard insurance policy as of the date of the filing for record of the deed to the Commissioner subject to the following conditions:

(a) The amount of the return premium due the mortgagee because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data supporting the application for debentures and the amount shall be deducted from the total amount claimed.

(b) If the mortgagee's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to the Commissioner, accompanied by the carrier's or agent's statement.

(c) If the mortgagee's calculation of the return premium is more than the actual return, the mortgagee may file with the Commissioner a claim, supported by the carrier's or agent's statement of the amount of the refund, whereupon the Commissioner shall issue a check to the mortgagee in settlement of the claim.

Property Title Transfers and Title Waivers

§ 203.385 Types of satisfactory title evidence.

The following types of title evidence shall be satisfactory to the Commissioner:

(a) *Fee or owner's title policy.* A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such instruments. If an owner's policy of title insurance is furnished, it shall show title in the Commissioner and inure to the benefit of his successors in office.

(b) *Mortgagee's policy of title insurance.* A mortgagee's policy of title insurance supplemented by an Abstract and an Attorney's Certificate of Title covering the period subsequent to the date of the mortgage, the terms of the policy shall be such that the liability of the title company will continue in favor of the Commissioner after title is conveyed to him. The policy may be drawn in favor of the mortgagee and the Federal Housing Commissioner, "as their interests may appear", with the consent of the title company endorsed thereon;

(c) *Abstract and legal opinion.* An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts

...f title and accompanied by the legal ...inion as to the quality of such title ...ined by an attorney at law experi...ced in examination of titles. If title ...idence consists of an Abstract and ...n Attorney's Certificate of Title, the ...arch shall extend for at least forty ...ars prior to the date of the Certifi...te to a well recognized source of ...ed title;

(d) *Torrens of similar certificate.* A ...rrens or similar title certificate; or

(e) *Title standard of U.S. or State ...ernment.* Evidence of title conform...g to the standards of a supervising ...anch of the Government of the ...ited States or of any State or Terri...ry thereof.

...203.386 Coverage of title evidence.

...vidence of title shall be executed as ...a date to include the recordation of ...e deed to the Commissioner. The ...idence of title shall show that ac...rding to the public records, there ...e not, at such date, any outstanding ...ior liens, including any past-due and ...paid ground rents, general taxes or ...ecial assessments.

...203.387 Acceptability of customary title evidence.

If the title and title evidence are ...ch as to be acceptable to prudent ...nding institutions and leading attor...ys generally in the community in ...hich the property is situated, such ...le and title evidence shall be satis...factory to the Commissioner and shall ...e considered by him as good and mar...etable.

...203.389 Waived title objections.

The Commissioner shall not object ...o title by reason of the following mat...ers:

(a) Violations of a restriction based ...n race, color or creed, even where ...uch restriction provides for a penalty ...f reversion or forfeiture of title or a ...ien for liquidated damage.

(b)(1) Customary easements for ...public utilities, party walls, driveways, ...and other purposes.

(2) Easements for public utilities ...along one or more of the property ...lines and extending not more than 10 ...feet therefrom and for drainage or ir...rigation ditches along the rear 10 feet of the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(c) Easements for underground conduits which are in place and do not extend under any buildings on the subject property;

(d) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(e) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(f) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on subject property where such encroachments do not exceed 1 foot.

(g) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(h) Encroachments on adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment;

(i) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line;

(j) Encroachments by garages or improvements other than those which are attached to or a portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the

exercise of the rights of repair and maintenance in connection therewith;

(k) Violations of cost or set back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien of the insured mortgage. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the insured mortgage, or provided a policy of title insurance is furnished expressly insuring the Commissioner against loss by reason of such penalties.

(l) Customary building and use restrictions which:

(1) Are coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner; or

(2) Are not coupled with a reversionary clause and have not been violated to a material extent.

(m) Outstanding oil, water or mineral rights (or damage caused by the exercise of such rights) which are customarily waived by prudent leading institutions and leading attorneys in the community.

(n) The voluntary or involuntary conveyance of a part of the subject property pursuant to condemnation proceedings or in lieu of condemnation proceedings, if:

(1) The part conveyed does not exceed 10 percent by area of the property;

(2) No damage to existing structures, improvements, or unrepaired damage to sewage, water, or paving has been suffered;

(3) All of the payment received as compensation for the taking by condemnation or conveyance in lieu of condemnation has been applied to reduction of the mortgage indebtedness;

(4) The conveyance occurred subsequent to insurance of the mortgage; and

(5) There is included with the documents and information furnished the Commissioner with the application for insurance benefits, a statement by the mortgagee that the requirements of this paragraph have been met.

(o) Federal tax liens and rights of redemption arising therefrom if the following conditions are observed. If the mortgagee acquires the property by foreclosure the mortgagee shall give notice to the Internal Revenue Service (IRS) of the foreclosure action. The Commissioner will not object to an outstanding right of redemption in the IRS if: (1) The Federal tax lien was perfected subsequent to the date of the mortgage lien, and (2) The mortgagee has bid an amount sufficient to make the mortgagee whole if the property is in fact redeemed by the IRS.

[36 FR 34508, Dec. 22, 1971, as amended at 41 FR 49736, Nov. 10, 1976]

§ 203.390 Waiver of title—mortgages or property formerly held by the Secretary.

(a) *Mortgages sold by the Secretary.* (1) If the Secretary sells a mortgage and such mortgage is later reassigned to him or the property covered by such mortgage is later conveyed to him, he will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage.

(2) The Secretary will accept an assignment of a mortgage previously sold by him, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage assignment was filed for record. In such instances, the Secretary will not object to title by reason of any such defect.

(b) *Property sold by the Secretary.* (1) If a property held by the Secretary is sold by him and he insures a mortgage financing such sale, and such mortgage is later reassigned to him or the property covered by such mortgage is later conveyed to him, he will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date such mortgage was filed for record.

(2) The Secretary will accept an assignment of a mortgage executed in connection with the sale of property by him, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a

defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage was filed for record. In such instances, the Secretary will not object to title by reason of any such defect.

§ 203.391 Title objection waiver with reduced insurance benefits.

Payment of an insurance claim will not be refused solely because the title evidence reveals a condition of title not taken into consideration in the original appraisal and not covered by the provisions of § 203.389, or not otherwise waived in writing by the Commissioner. In such instances, the claim will be paid if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Commissioner to compensate for any anticipated loss to the Mutual Mortgage Insurance Fund as a result of the existence of the title condition at the time of claim.

Payment of Insurance Benefits

§ 203.400 Method of payment.

If the application for insurance benefits is acceptable to the Commissioner payment of the insurance claim shall be made in cash, in debentures or in a combination of both, as determined by the Commissioner at the time of payment except that where the mortgage is insured pursuant to section 223(e) of the Act such claim shall be paid in cash from the Special Risk Insurance Fund, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the claim shall be paid by issuing debentures.

[36 FR 24508, Dec. 22, 1971; 43 FR 13511, Mar. 31, 1978]

§ 203.401 Amount of payment—conveyed and non-conveyed properties.

(a) *Conveyed properties.* Where a claim for the insurance benefits is filed in accordance with this subpart, based on the conveyance of title to the mortgaged property to the Commissioner, the amount of the insurance benefits shall be computed by adding to the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, on the date of the acquisition of the property otherwise after default, or on the date the property was acquired by the Commissioner under a direct conveyance by the mortgagor, the amount of all payments made by the mortgagee and allowances for items set forth in § 203.402, less all applicable items set forth in § 203.403.

(b) *Claims without conveyance of title.* (1) If the mortgagee acquires title to the mortgaged property pursuant to a bid amount equal to the Commissioner's adjusted fair market value and the mortgagee elects to retain title as provided in § 203.368(g)(2), or if the mortgagee acquires title pursuant to a bid in excess of the Commissioner's adjusted fair market value (see § 203.368(g)(4)), the amount of the insurance benefits shall be determined by deducting the amount bid at the sale from the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of institution of the foreclosure proceedings, and adding to the difference, if any, all applicable items set forth in § 203.402 and subtracting therefrom all applicable items set forth in § 203.403; provided however, that appropriate adjustment shall be made for any such items covered by proceeds of the foreclosure sale.

(2) If a party other than the mortgagee acquires title to the mortgaged property pursuant to a bid at foreclosure sale not less in amount than the Commissioner's adjusted fair market value, the amount of the insurance benefits shall be determined by deducting the proceeds of the foreclosure sale distributed to the mortgagee from the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the foreclosure proceedings, and adding to the difference, if any, all applicable items set forth in § 203.402 and subtracting therefrom

all applicable items set forth in § 203.403; provided, however, that appropriate adjustment shall be made for any such items covered by the proceeds of the foreclosure sale.

(3) If the mortgagee acquires title to the mortgaged property pursuant to a bid not less in amount than the Commissioner's adjusted fair market value, and the mortgagor or another party redeems the property, the amount of the insurance benefits shall be determined by deducting the amount paid to redeem the property and received by the mortgagee from the original principal balance of that mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, and adding to the difference, if any, all applicable items set forth in § 203.402 and subtracting therefrom all applicable items set forth in § 203.403; provided however, that appropriate adjustments shall be made for any such items covered by that amount paid by the mortgagor or other party to redeem the property.

[52 FR 1328, Jan. 13, 1987]

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

The insurance benefits paid in connection with foreclosed properties, whether or not conveyed to the Commissioner, and those properties conveyed to the Commissioner as a result of a deed in lieu of foreclosure, shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage;

(b) Special assessments, which are noted on the application for insurance of which become liens after the insurance of the mortgage;

(c) Hazard insurance premiums on the mortgaged property not in excess of a "reasonable rate" as defined in § 203.379(c);

(d) Periodic MIP or open-end insurance charges;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner, or was acquired by the mortgagee and retained pursuant to § 203.368;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Secretary) actually paid by the mortgagee and approved by the Commissioner, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner that such extra costs are over and above those customarily incurred in the area. Costs of acquiring the property otherwise than by foreclosure may include not to exceed $200 paid to the mortgagors as consideration for their execution of a deed in lieu of foreclosure;

(g) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property. Reasonable costs for performing the inspections required by § 203.377 and to determine if the property is vacant or abandoned are considered to be costs of protecting, operating or preserving the property. Reasonable costs incurred in evicting occupants and in removing debris and personal property from acquired properties are also considered to be costs of protecting, operating and preserving the property;

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan;

(i) An amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on ac-

amount of interest on debentures and the payment of any MIP and open-end insurance charge by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means under a mortgage to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply during any part or all of the period of the mortgagor's military service and three months thereafter;

(j) Charges for the administration, operation, maintenance or repair of community-owned property or the maintenance and repair of the mortgaged property paid by the mortgagee with respect to which it certifies to the Commissioner that payment was made for the purpose of discharging an obligation arising out of a covenant filed for record and approved by the Commissioner prior to the insurance of the mortgage;

(k)(1) For properties conveyed to the Commissioner, an amount equivalent to the debenture interest which would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356, 203.359, 203.360 and 203.365 of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368, an amount equivalent to the sum of:

(i) The debenture interest which would have been earned, as of the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with §203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(ii) The debenture interest which would have been earned, from the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, 203.368(i) (3) and (5) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(l) Costs of appraisal under 203.368(e);

(m) Costs of additional advertising under 203.368(h);

(n) Costs of foreclosure as computed in paragraph (f) of this section where the acquiring party is one other than the mortgagee, as provided in § 203.368;

(o) In any case in which the Commissioner, pursuant to § 203.369, requires or requests that the mortgagee seek a deficiency judgment, an amount necessary to reimburse the mortgagee for those additional costs incurred that exceed the costs of foreclosure. In those jurisidictions that require the initiation of a judicial foreclosure action in order to obtain a deficiency judgment, a mortgagee shall receive full reimbursement for the costs of the foreclosure action, where, but for the requested deficiency judgment, judicial foreclosure would not have been necessary.

[36 FR 34508, Dec. 22, 1971, as amended at 41 FR 49736, Nov. 10, 1976; 45 FR 56801, Aug. 6, 1980; 48 FR 28806, June 23, 1983; 51 FR 28551, Aug. 8, 1986; 52 FR 1329, Feb. 13, 1987; 53 FR 4388, Feb. 16, 1988]

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§ 203.402a Reimbursement for uncollected interest.

The mortgagee shall be entitled to receive an allowance in the insurance settlement for unpaid mortgage interest, if the mortgagor fails to meet the requirements of a forbearance agreement entered into pursuant to § 203.614 and such failure continues for a period of 60 days. The interest allowance shall be computed to the earliest of the applicable dates following:

(a) The date of the institution of foreclosure.

(b) The date of the acquisition of the property by the mortgagee by means other than foreclosure.

(c) The date the property was acquired by the Commissioner under a direct conveyance from the mortgagor.

(d) 90 days following the date the mortgagor fails to meet the requirements of the forebearance agreement, or such other date as the Commissioner may approve in writing prior to the expiration of the 90-day period.

[36 FR 34508, Dec. 22, 1971. Redesignated and amended at 41 FR 49735, Nov. 10, 1976]

§ 203.403 Items deducted from payment—conveyed and non-conveyed properties.

There shall be deducted from the total of the added items in §§ 203.401 and 203.402 the following cash items:

(a) All amounts recieved by the mortgagee on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All amounts received by the mortgagee from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

(c) All cash retained by the mortgagee including amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

[36 FR 24508, Dec. 22, 1971, as amended at 52 FR 1329, Jan. 13, 1987]

§ 203.404 Amount of payment—assigned mortgages.

Upon an acceptable assignment of a mortgage, the Commissioner shall pay to the mortgagee the unpaid principal balance of the loan at the time of assignment and an amount determined by:

(a) Adding the following items:

(1) Any accrued and unpaid mortgage interest.

(2) Any advances made under the mortgage and approved by the Commissioner.

(3) Reimbursement for such costs and attorney's fees as the Commissioner finds were properly incurred in connection with the defaulted mortgage and its assignment to the Commissioner.

(4) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such payment is made, except that when the mortgagee fails to meet any one of the requirements of §§ 203.350(e), 203.351, and 203.353 of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(b) Deducting all cash retained by the mortgagee, including amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

[36 FR 24508, Dec. 22, 1971, as amended at 55 FR 283, Jan. 4, 1990]

§ 203.405 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is higher. For ap-

...sations involving mortgages origi...ated under the single family Direct ...dorsement program, debentures ...all bear interest from the date of ...e; payable semiannually on the ...rst day of January and the first day ...f July of each year at the rate in ...ffect as of the date the mortgage was ...ndorsed for insurance.

[40 FR 11941, Mar. 22, 1983]

§ 203.406 Maturity of debentures.

Debentures shall mature 20 years from the date of issue.

§ 203.407 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 203.408 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000, and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the mortgagee.

§ 203.409 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

§ 203.410 Issue date of debentures.

(a) Conveyed properties and claims without conveyance—Where the property is conveyed to the Commissioner, or the mortgagee or other party acquires title to the property under the claim without conveyance procedure, debentures shall be dated:

(1) If issued prior to September 2 1964, or issued on or after such date and a certificate of claim is also issued, as of one of the dates as follows:

(i) The foreclosure proceedings were instituted;

(ii) The property was otherwise acquired by the mortgagee after default; or

(iii) The property was acquired by the Commissioner, if directly conveyed to the Commissioner from the mortgagor.

(2) If issued on or after September 2, 1964, and a certificate of claim is not issued, as of the date of default as defined in this part.

(3) As of the applicable date specified in paragraph (a)(1) of this section, if the insurance settlement includes an allowance for uncollected interest pursuant to § 203.402a

(b) *Assigned mortgages.* Where the mortgage is assigned to the Commissioner, debentures shall be dated as of the date of the assignment.

(c) Notwithstanding paragraph (a) of this section, in connection with conveyed properties and claims without conveyance, debentures issued as reimbursement for expenditures made by a mortgagee after the date of default shall be dated as of the date the expenditure is actually made by the mortgagee.

[36 FR 24508, Dec. 22, 1971, as amended at 50 FR 3892, Jan. 29, 1985; 52 FR 1329, Jan. 13, 1987]

§ 203.411 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner, shall be adjusted by the issuance of a check in payment thereof.

CERTIFICATE OF CLAIM

§ 203.415 Delivery of certificate of claim.

(a) If the mortgage was accepted for insurance pursuant to a commitment issued prior to September 2, 1964, the mortgagee may, by filing a written request with the application for deben-

tures, receive in addition to the debentures and the cash adjustment check, a certificate of claim issued in accordance with section 204(e) of the Act. This certificate shall become payable (if at all) as prescribed in section 204(f) of the Act.

(b) If the mortgage was accepted for insurance pursuant to a commitment issued on or after September 2, 1964, no certificate of claim shall be issued.

§ 203.416 Amount and items of certificate of claim.

The certificate shall be for an amount which the Commissioner determines to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and cash adjustment check. The certificate shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorneys' fees, unpaid interest, and cost of repairs to the property made by the mortgagee to remedy the waste.

§ 203.417 Rate of interest of certificate of claim.

Each certificate of claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of 3 percent per annum.

Mutual Mortgage Insurance Fund and Distributive Shares

§ 203.420 Nature of Mutual Mortgage Insurance Fund.

The Mutual Mortgage Insurance Fund shall consist of the General Surplus Account and the Participating Reserve Account.

§ 203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.

For any semiannual period in which Mutual Mortgage Insurance operations shall result in a net income, or loss, the Commissioner shall allocate such net income or such loss to the General Surplus Account and/or to the Participating Reserve Account as he may determine to be in accord with sound actuarial and accounting practice. In determining net income or loss the Commissioner shall take into consideration all income received from fees, premiums and earnings on investments of the fund, operating expenses and provision for losses of the fund.

§ 203.422 Right and liability under Mutual Mortgage Insurance Fund.

No mortgagor or mortgagee shall have any vested right in a credit balance in either the General Surplus Account or the Participating Reserve Account. No mortgagor or mortgagee shall be subject to any liability arising under the mutuality of the Mutual Mortgage Insurance Fund.

§ 203.423 Distribution of distributive shares.

(a) The Commissioner may provide for the distribution to the mortgagor of a share of the participating reserve account if the contract of insurance is terminated by:

(1) Conveyance to one other than the Commissioner and a claim for the insurance benefits is not presented by the mortgage (§ 203.315), provided, however, in the case of a mortgage insured pursuant to an application for a conditional commitment received on or after May 19, 1988, (or, as appropriate, an application for mortgage insurance endorsement under the Single Family Direct Endorsement program, as provided in § 203.255, where the property appraisal report is signed by the mortgagee's approved underwriter on or after May 19, 1988, no distribution shall be made if the mortgagee forecloses the mortgage or accepts a deed-in-lieu of foreclosure;

(2) Prepayment of the mortgage (§ 203.316); or

(3) Voluntary agreement of the mortgagor and mortgagees (§ 203.317).

(b) The Commissioner shall determine the amount of the distributive share by multiplying the amount of the premium or premiums paid by the applicable distributive share percentage for mortgages insured in the year the mortgage was endorsed for insurance. The Commissioner shall deter-

mine the applicable distributive share percentage in an equitable manner and in accordance with sound financial and actuarial practice, taking into account the cumulative actual financial and actuarial experiences through the end of the most recent calendar year.

[48 FR 28806, June 23, 1983, as amended at 52 FR 1329, Jan. 13, 1987; 53 FR 10530, Apr. 1, 1988]

§ 203.424 Maximum amount of distributive shares.

In no event shall a distributive share of the Participating Reserve Account exceed the aggregate scheduled annual premiums of the mortgagor to the year of termination of the insurance.

§ 203.425 Finality of determination.

The determination of the Commissioner as to the amount to be paid to any mortgagor from the Mutual Mortgage Insurance Fund shall be final and conclusive.

§ 203.426 Inapplicability to housing in older declining urban areas.

The provisions of §§ 203.420 through 203.425 shall not apply to mortgages financing housing in declining urban areas meeting the requirements of § 203.43a.

SALE, ASSIGNMENT AND PLEDGE OF INSURED MORTGAGE

§ 203.430 Sale of interests in insured mortgages.

No mortgagee may sell or otherwise dispose of any insured mortgage, or group of insured mortgages, or any partial interest in such mortgage or mortgages by means of any agreement, arrangement or device except pursuant to this subpart.

§ 203.431 Sale of insured mortgage to approved mortgagee.

An insured mortgage may be sold to another approved mortgagee. The seller shall notify HUD of the sale within 15 calendar days, on a form prescribed by HUD and acknowledged by the buyer.

[45 FR 27929, Apr. 25, 1980]

§ 203.432 Effect of sale of insured mortgage.

When an insured mortgage is sold to another approved mortgagee, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract, provided that the seller shall not be relieved of its obligation to pay mortgage insurance premiums until the notice required by § 203.431 is received by HUD.

[45 FR 27929, Apr. 25, 1980]

§ 203.433 Assignments, pledges and transfers by approved mortgagee.

(a) An assignment, pledge, or transfer of an insured mortgage or group of insured mortgages, not constituting a final sale, may be made by an approved mortgagee to another approved mortgagee provided the following requirements are met:

(1) The assignor, pledgor or transferor shall remain the mortgagee of record.

(2) The Commissioner shall have no obligation to recognize or deal with any party other than the mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(b) An assignment or transfer of an insured mortgage or group of insured mortgages may be made by an approved mortgagee to other than an approved mortgagee provided the requirements under paragraphs (a)(1) and (2) of this section are met and the following additional requirements are met:

(1) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan) which certifies to the approved mortgagee that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to hold an insured mortgage or group of insured mortgages.

(2) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the follow-

ing alternate courses of action within 1 year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(i) The transferor or assignor shall repurchase and accept a reassignment of such mortgage or group of mortgages.

(ii) The transferor or assignor shall obtain a sale and transfer of such mortgage or group of mortgages to an approved mortgagee.

(c) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

§ 203.434 Declaration of trust.

A sale of a beneficial interest in a group of insured mortgages, where the interest to be acquired is related to all of the mortgages as an entirety, rather than an interest in a specific mortgage shall be made only pursuant to a declaration of trust, which has been approved by the Commissioner prior to any such sale.

§ 203.435 Transfers of partial interests.

A partial interest in an insured mortgage may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(a) *Principal mortgagee.* The insured mortgage shall be held by an approved mortgagee which, for the purposes of this section, shall be referred to as the "principal mortgagee".

(b) *Interest of principal mortgagee.* The principal mortgagee shall retain and hold for its own account a financial interest in the insured mortgage.

(c) *Qualification for holding partial interest.* A partial interest in an insured mortgage shall be issued to and held only by:

(1) A mortgagee approved by the Commissioner; or

(2) A corporation, trust or organization (including, but not limited to any pension fund, pension trust, or profit-sharing plan) which certifies to the principal mortgagee that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to acquire a partial interest in an insured mortgage.

(d) *Participation agreement provisions.* The participation agreement shall include provisions that:

(1) The principal mortgagee shall retain title to the mortgage and remain the mortgagee of record under the contract of mortgage insurance.

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal mortgagee with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(3) The mortgage documents shall remain in the custody of the principal mortgagee.

(4) The responsibility for servicing the insured mortgages shall remain with the principal mortgagee.

§ 203.436 Claim procedure—graduated payment mortgages.

All of the provisions of this subpart are applicable to mortgages insured under the provisions of § 203.45 except as provided in this section.

(a) "Beginning of Amortization" means the date one month prior to the date of the first monthly payment to principal or interest.

(b) The phrases "unpaid principal balance of the loan" or "principal of the mortgage which was unpaid" as used in this subpart, shall be construed to refer to the outstanding mortgage amount as increased by any accrued mortgage interest which was unpaid pursuant to a financing plan approved by the Secretary.

[41 FR 42949, Sept. 29, 1976]

Cooperative Unit Mortgages

§ 203.437 Mortgages involving a dwelling unit in a cooperative housing development.

(a) The provisions of §§ 203.251(d), 203.366 and 203.440 through 203.495 shall not apply to mortgages insured pursuant to section 203(n) of the National Housing Act.

(b) References in this subpart to the term "deed" and "deed in lieu of foreclosure", or the word "property" when found in the phrases "conveyance of

property," "acquisition of property", or other phrases indicating transfer of property, shall be construed to mean the assignment of the Corporate Certificate and Occupancy Certificate. However, when the use of such terms, as interpreted in light of section 203(n) of the National Housing Act, clearly indicates that reference to the dwelling unit is intended, such terms shall mean the dwelling unit identified in the Occupancy Certificate.

(c) In addition to the requirements of § 203.365, the mortgagee shall forward to the Secretary within 45 days after the transfer of the Corporate Certificate:

(1) A statement certified by the officer of the corporation charged with maintenance of the Corporate Certificate Transfer Book that such book currently shows that the Secretary is the owner of the Corporate Certificate; and,

(2) The Occupancy Certificate in the name of the Secretary.

(d) The mortgagee shall tender to the Secretary good and marketable title to the Corporate Certificate and the exclusive right of permanent possession of the dwelling unit.

(e) In lieu of the types of title evidence provided in § 203.385, the Secretary will accept a legal opinion signed by an attorney at law experienced in the examination of titles that the Secretary has good and marketable title to the Corporate Certificate and the exclusive right of possession of the dwelling unit.

(f) The Secretary may accept assignment of mortgages insured under this part if it is determined by the Secretary that it is in the Department's interest to do so provided that the blanket mortgage is in default and the holder of such mortgage has announced an intention to foreclose.

[42 FR 40432, Aug. 10, 1977; 42 FR 57435, Nov. 2, 1977]

Mortgages on Property Located on Indian Land

§ 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

(a) *Exemptions.* The provisions of § 203.366 shall not apply to mortgages insured pursuant to section 248 of the National Housing Act.

(b) *Claim Procedure.* In addition to other actions which the mortgagee may take pursuant to this subpart in order to receive insurance benefits, a mortgagee shall be entitled to receive such benefits on a mortgage insured under § 203.43h when (1) the mortgagor is more than 90 days in default; (2) the mortgagee has submitted appropriate documentation to the Secretary in accordance with § 203.350(b); and (3) the Secretary has approved the assignment of the mortgage.

(c) *Foreclosure by Secretary.* Subject to consideration of forbearance in accordance with § 203.664, the Secretary may initiate foreclosure proceedings with respect to any mortgage acquired under this section in a tribal court, a court of competent jurisdiction or Federal district court. If the mortgagor remains on the property following foreclosure, the Secretary may seek an eviction order from the court hearing the foreclosure action.

[51 FR 21872, June 16, 1986]

Mortgages on Property Located on Hawaiian Home Lands

§ 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.

(a) *Exemptions.* The provisions of §§ 203.351(a)(8), 203.353(a), and 203.368, do not apply to mortgages insured pursuant to section 247 of the National Housing Act.

(b) *Claim procedure.* Where the mortgage is 180 days or more in default, the mortgagee may assign the mortgage to the Secretary and file its claim for insurance benefits in accordance with the provisions of this subpart. No claim on an insured mortgage will be paid other than through assignment of the mortgage.

(c) *Notice of delinquency.* The mortgagee shall notify the Department of Hawaiian Home Lands each month of those mortgages insured pursuant to section 247 of the National Housing Act on leaseholds of Hawaiian home lands which are 90 or more days delinquent, and of the status of all mortgages which were reported as 90 or

more days delinquent the previous month. This notice is in addition to the requirement under § 203.332 to report to HUD concerning all insured mortgages 90 or more days delinquent.

[52 FR 8068, Mar. 16, 1987. Correctly designated at 52 FR 9989, Mar. 27, 1987 and 52 FR 28470, July 30, 1987, and amended at 55 FR 283, Jan. 4, 1990]

Mortgages on Property in Allegany Reservation of Seneca Indians

§ 203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

(a) *Applicability.* This section shall apply to mortgages authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) only when the date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

(b) *Claims.* In addition to other actions which the mortgagee may take pursuant to this subpart in order to receive insurance benefits, a mortgagee shall be entitled to receive such benefits when the Secretary has agreed to accept assignment of a mortgage in accordance with § 203.350(d) and the mortgagee has complied with §§ 203.351 and 203.353.

(c) *Exceptions.* Notwithstanding § 203.366, title to a leasehold estate conveyed to the Commissioner is not required to be marketable as to the term of the lease, provided that the mortgagee has taken any actions required by the Secretary to attempt to obtain a long-term renewal of the lease. Title evidence will be required in a form satisfactory to the Commissioner (see § 203.385) unless the Commissioner agrees to accept title to a leasehold estate without title evidence.

[52 FR 48202, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

Rehabilitation Loans

§ 203.440 Definitions.

All of the definitions contained in § 203.50 of this subchapter shall apply to §§ 203.440 et seq. In addition the following terms shall have the meaning indicated:

(a) "Insured loan" means a loan which has been insured as evidenced by the issuance of an Insurance Certificate or by the endorsement of the note for insurance by the Commissioner.

(b) "Contract of insurance" means the agreement evidenced by the issuance of an Insurance Certificate or by the endorsement of the Commissioner upon the note given in connection with an insured loan, incorporating by reference the regulations in §§ 203.440 et seq. and the applicable provisions of the Act.

(c) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(d) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(e) "Maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the original note and security instrument.

(f) "Debentures" means registered, transferable securities which are valid and binding obligations, unconditionally guaranteed as to principal and interest by the United States.

§ 203.441 Insurance of loan.

Upon compliance with the commitment, the Commissioner shall insure the loan evidencing the insurance by the issuance of an insurance certificate which will identify the regulations under which the loan is insured and the date of insurance.

[45 FR 33967, May 21, 1980]

§ 203.442 Contract created by Insurance Certificate or by endorsement.

The loan is insured from the date of the issuance of an Insurance Certificate or from the date of the endorsement of the note. The Commissioner and the lender shall thereafter be bound by the Act and the regulations in §§ 203.440 et seq. with the same

force and to the same extent as if a separate contract had been executed relating to the insured loan.

§ 203.443 Insurance premium.

All of the provisions of §§ 203.260 through 203.269 [1] concerning mortgage insurance premiums, apply to loans insured under § 203.50.

[47 FR 30753, July 15, 1982]

§ 203.457 Voluntary termination of contract.

Upon request by the borrower and lender the Commissioner may terminate the insurance contract on the loan. The lender shall cancel the insurance endorsement on the insurance certificate or note upon receipt of notice from the Commissioner that the contract of insurance is terminated.

[37 FR 8662, Apr. 29, 1972]

§ 203.458 Termination by prepayment of loan.

The contract of insurance shall be terminated if the loan is paid in full prior to its maturity.

§ 203.459 Notice of termination by lender.

No contract of insurance shall be terminated until the lender has given written notice thereof to the Commissioner within 15 calendar days from the occurrence of one of the approved methods of termination set forth in this subpart.

[45 FR 31716, May 14, 1980]

§ 203.462 Pro rata payment of premium before termination.

No contract of insurance shall be terminated until the lender has paid to the Commissioner the pro rata portion of the current annual insurance premium.

§ 203.463 Notice and date of termination by Commissioner.

The Commissioner shall notify the lender that the contract of insurance has been terminated and the effective termination. The termination date shall be the last day of the month in which:

(a) The loan was prepaid; or

(b) A voluntary termination request is received by the Commissioner, or

(c) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.464 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent insurance premium shall cease and all rights of the borrower and lender shall be terminated.

§ 203.466 Definition of default.

If the borrower fails to make any payment, or to perform any other obligation under the loan and such failure continues for a period of 30 days, the loan shall be considered in default for the purposes of §§ 203.440 et seq.

§ 203.467 Date of default.

For the purposes of §§ 203.440 et seq. the date of default shall be considered as 30 days after—

(a) The first uncorrected failure to perform any obligation under the loan, or

(b) The first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payment in the order in which they became due.

§ 203.468 Notice of default.

The lender shall, within 60 days after default as defined in §§ 203.440 et seq., give written notice thereof to the Commissioner, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 203.469 Reinstatement of defaulted loan.

If after default and prior to assignment by the lender of the loan to the Commissioner, the borrower shall pay to the lender all monthly payments in default, written notice shall be given to the Commissioner within 30 days and the insurance shall continue as if such default had not occurred.

[1] Section 203.269 was removed at 48 FR 35083, Aug. 3, 1983.

§ 203.471 Conditions of special forbearance.

In addition to any other relief which may be afforded in the event of default, the Commissioner may approve special forbearance relief with respect to any loan of the Commissioner—

(a) Finds that default was due to circumstances beyond the borrower's control; and

(b) Finds that it is probable that the loan will be restored to a current condition within a reasonable period of time.

§ 203.472 Relief for borrower in military service.

If the borrower is a person in military service, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the lender may, by written agreement with the borrower, postpone for the period of military service, and 3 months thereafter, any part of the monthly payment, which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the obligation within its original maturity. The agreement shall in no way affect the amount of the annual insurance premium which shall continue to be calculated in accordance with the original amortization provisions of the loan.

§ 203.473 Claim procedure.

(a) A claim for insurance benefits on a loan secured by a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.350 through 203.404.

(b) A claim for insurance benefits on a loan secured by other than a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.474 through 203.478. However, the lender may not, except with the approval of the Commissioner, proceed against the security and also make claim under the contract of insurance, but shall elect which method it desires to pursue.

[49 FR 21319, May 21, 1984]

§ 203.474 Maximum claim period.

A claim for insurance benefits on a loan secured by other than a first mortgage shall be filed within one year from the date of default, or within such additional period of time as may be approved by the Commissioner.

[49 FR 21319, May 21, 1984]

§ 203.476 Claim application and items to be filed.

The claim for reimbursement on a loan secured by other than a first mortgage shall be made upon an application form prescribed by the Commissioner. The application shall be accompanied by:

(a) The fiscal data pertaining to the loan transaction as required by the fiscal data form;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and the security held, assigned to the Commissioner without recourse of warranty, except that no act or omission of the lender shall have impaired the validity and priority of such security;

(d) Any hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security;

(e) The assignment to the Commissioner of all rights and interests arising under the loan, and all claims of the lender against the borrower or others arising out of the loan transaction;

(f) Any title evidence held by the lender;

(g) All property of the borrower held by the lender or to which it is entitled and, if payment is requested in debentures, all cash held by the lender or to which it is entitled, including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness;

(h) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(l) Any additional information or data which the Commissioner may require.

(Approved by the Office of Management and Budget under control number 2502-0051)

[36 FR 24508, Dec. 22, 1971, as amended at 49 FR 21319, May 21, 1984]

§ 203.477 Certificate by lender when loan assigned.

At the time of the assignment of the loan, the lender shall certify to the Commissioner that:

(a) The amount stated in the instrument of assignment is actually due and owing on the loan;

(b) There are no offsets of counterclaims thereto, and the financial institution has a good right to assign.

(c) The mortgage transaction did not involve a first mortgage and the mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances other than a first mortgage, or defects which may arise except such liens or other matters as may have been approved by the Commissioner.

[36 FR 24508, Dec. 22, 1971, as amended at 45 FR 33967, May 21, 1980; 49 FR 21320, May 21, 1984]

§ 203.478 Payment of insurance benefits.

(a) *Claim computation, items included.* Upon acceptable assignment of the note and security instruments, the Commissioner shall pay the lender an amount equal to the unpaid principal balance of the loan, plus:

(1) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(2) Any advances made previously under the provisions of the loan instrument and approved by the Commissioner.

(3) Reimbursement for such reasonable collection costs, court costs and attorney's fees as may be approved by the Commissioner.

(4) Reimbursement for premiums paid on any hazard insurance policies held on the property.

(5) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned, as of the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the debenture interest shall be computed for 30 days or the extended period.

(b) *Claim computation, items deducted.* If the lender is to receive cash, there shall be deducted from the total of the added items in paragraph (a) of this section any cash held by the lender or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness.

(c) *Method of payment.* Payment of claim shall be made in the following manner:

(1) *Payment in cash.* Unless a written request for payment in debentures is filed with the application, payment shall be made in cash.

(2) *Optional payment in debentures.* Payment shall be made in debentures upon filing a written request with the application.

(d) *Special provision—payment in debentures.* All of the provisions of §§ 203.479 through 203.487 of this subpart shall be applicable in connection with the payment in debentures of insurance benefits under this subpart.

§ 203.479 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the FEDERAL REGISTER.

[47 FR 26125, June 17, 1982]

§ 203.481 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 203.482 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 203.483 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000 and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the lender.

§ 203.484 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

§ 203.486 Issue date of debentures.

The debentures shall be issued as of the date of the execution of the assignment of the loan in accordance with the requirements of § 203.476(c).

§ 203.487 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, shall be adjusted by the issuance of a check in payment thereof.

§ 203.488 Sale of interests in insured loans.

No lender may sell or otherwise dispose of any insured loan or group of insured loans, or any partial interest in such loan or loans by means of any agreement, arrangement or device except pursuant to this subpart.

§ 203.489 Sale of insured loan to approved lender.

An insured loan may be sold to another approved lender.The seller shall notify HUD of the sale within 15 calendar days, on a form prescribed by HUD and acknowledged by the buyer.

[45 FR 27929, Apr. 25, 1980]

§ 203.491 Effect of sale of insured loan.

When an insured loan is sold to another approved lender, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract, provided that the seller shall not be relieved of its obligation to pay insurance premiums until the notice required by § 203.489 is received by HUD.

[45 FR 27929, Apr. 25, 1980]

§ 203.492 Assignments, pledges and transfers by approved lender.

(a) An assignment, pledge or transfer of an insured loan or group of insured loans, not constituting a final sale, may be made by an approved lender to another approved lender provided the following requirements are met:

(1) The assignor, pledgor or transferor shall remain the lender of record.

(2) The Commissioner shall have no obligation to recognize or deal with any party other than the lender of record with respect to the rights, benefits and obligations of the lender under the contract of insurance.

(b) An assignment or transfer of an insured loan or group of insured loans may be made by an approved lender to other than an approved lender provided the requirements under paragraphs (a) (1) and (2) of this section are met and the following additional requirements are met:

(1) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan)

which certifies to the approved lender that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to hold an insured loan or group of insured loans.

(2) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the following alternate courses of action within one year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(i) The transferor or assignor shall repurchase and accept a reassignment of such loan or group of loans.

(ii) The transferor or assignor shall obtain a sale and transfer of such loan or group of loans to an approved lender.

(c) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

§ 203.493 Declaration of trust.

A sale of a beneficial interest in a group of insured loans, where the interest to be acquired is related to all of the loans as an entirety, rather than an interest in a specific loan, shall be made only pursuant to a declaration of trust, which has been approved by the Commissioner prior to any such sale.

§ 203.495 Transfers of partial interests.

A partial interest in an insured loan may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(a) *Principal mortgagee.* The insured loan shall be held by an approved lender which, for the purposes of this section, shall be referred to as the "principal lender".

(b) *Interest of principal lender.* The principal lender shall retain and hold for its own account a financial interest in the insured loan.

(c) *Qualification for holding partial interest.* A partial interest in an insured loan shall be issued to and held only by:

(1) A lender approved by the Commissioner; or

(2) A corporation, trust or organization (including, but not limited to any pension fund, pension trust, or profit-sharing plan) which certifies to the principal lender that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to acquire a partial interest in an insured loan.

(d) *Participation agreement provisions.* The participation agreement shall include provisions that:

(1) The principal lender shall retain title to the loan and remain the lender of record under the contract of loan insurance.

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal lender with respect to the rights, benefits, and obligations of the lender under the contract of insurance.

(3) The loan documents shall remain in the custody of the principal lender.

(4) The responsibility for servicing the insured loans shall remain with the principal lender.

Extension of Time

§ 203.496 Actions to be taken by mortgagee or lender.

With respect to any action required by the mortgagee or lender within a period of time prescribed by this subpart the Commissioner may extend such period.

Amendments

§ 203.499 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart C—Servicing Responsibilities

Source: 41 FR 49736, Nov. 10, 1976, unless otherwise noted.

GENERAL REQUIREMENTS

§ 203.500 Mortgage servicing generally.

This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee commence foreclosure or acquisition of a property until the requirements of §§ 203.600 through 203.656 and implementing instructions have been followed. (See § 203.658.) The Department takes no position on whether a mortgagee's refusal or failure to comply with §§ 203.640 through 203.658 is a legal defense to foreclosure; that is a matter to be determined by the courts.

[52 FR 6915, Mar. 5, 1987]

§ 203.502 Responsibility for servicing.

(a) A mortgagee may utilize any individual or firm to service its Secretary-insured mortgage loans. However, the servicer employed must fully discharge the servicing responsibilities of the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Secretary for proper servicing and the actions of its servicer shall be considered to be the actions of the mortgagee. If the servicer is an approved mortgagee, it shall also be fully responsible to the Secretary for its acts as a servicer as though it were the mortgagee, except to the extent that it acts in accordance with specific written instructions from the mortgagee.

(b) Whenever servicing of any mortgage is transferred from one mortgagee or servicer to another, the mortgagee effecting the transfer shall notify or arrange to notify the mortgagor. The notification shall provide the mortgagor with the name, address and telephone number of the new servicer or mortgagee and include any special instructions for the handling of payments during the conversion period. Notification pursuant to this paragraph must be mailed to reach the mortgagor no later than ten days prior to the due date of the first payment which the mortgagor is asked to remit to the new servicer or mortgagee. The mortgagee effecting a transfer of servicing shall also notify the Secretary within thirty days thereof on a form approved by the Secretary.

§ 203.508 Providing information.

(a) Mortgagees shall provide loan information to mortgagors and arrange for individual loan consultation on request. The mortgagee must establish written procedures and controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to mortgagors is required:

(1) An office staffed with competent personnel located within 200 miles of the property, capable of providing timely responses to requests for information. Complete records need not be maintained in such an office if the staff is able to secure needed information and pass it on to the mortgagor.

(2) Toll-free telephone service at an office capable of providing needed information.

(b) All mortgagors must be informed of the system available for obtaining answers to loan inquiries, the office from which needed information may be obtained and reminded of the system at least annually. Toll-free telephone service need not be provided to a mortgagor other than at the office designated to serve the mortgagor nor other than from the immediate vicinity of the security property.

(c) Within thirty days after the end of each calendar year, the mortgagee shall furnish to the mortgagor a statement of the interest paid, and of the taxes disbursed from the escrow account during the preceding year. At the mortgagor's request, the mortgagee shall furnish a statement of the escrow account sufficient to enable the mortgagor to reconcile the account.

(d) Mortgagees must respond to HUD requests for information concerning individual accounts.

(The information collection requirements contained in paragraph (c) were approved

by the Office of Management and Budget under control number 2502-0235)

[41 FR 49736, Nov. 10, 1976, as amended at 48 FR 28986, June 24, 1983]

§ 203.550 Escrow accounts.

(a) It is the mortgagee's responsibility to make escrow disbursements before bills become delinquent. Mortgagees must establish controls to insure that bills payable from the escrow fund or the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for items payable from the escrow account must not be charged to the mortgagor unless it can be shown that the penalty was the direct result of the mortgagor's error or omission. Early payment of a bill to take advantage of a discount should be made whenever it is to the mortgagor's benefit, if escrow funds are available for the payment of the bill.

(b) Not later than the end of the second loan year the mortgagee shall establish a system for the periodic analysis of the escrow account which analysis shall be accomplished at least once a year thereafter. The monthly escrow payment shall be adjusted, after analysis, to provide a sufficient accumulation of escrow funds to make anticipated disbursements during the ensuing year. The mortgagor shall be given at least ten days notice of adjustment in monthly payments and an adequate explanation of the reasons for any change. When the escrow account is analyzed in accordance with this paragraph, any surplus or shortage shall be refunded to or collected from the mortgagor as provided for in the security instrument. If a surplus is to be refunded, application of the surplus to delinquent payments shall be considered as a cash refund to the mortgagor.

(c) The mortgagee's estimate of escrow requirements shall be based on the best information available as to probable payments which will be required to be made from the account in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may require an escrow account up to one-sixth in excess of the current estimated total annual requirement, but larger amounts shall not be held by the mortgagee unless expressly requested by the mortgagor.

(d) The mortgagee shall not institute foreclosure when the only default of the mortgagor occupant is a present inability to pay a substantial escrow shortage, resulting from an adjustment pursuant to this section, in a lump sum.

(e) When the contract of mortgage insurance is terminated voluntarily or because of prepayment in full, sums in the escrow account to pay the mortgage insurance premiums shall be remitted to HUD with a form approved by the Secretary for reporting the voluntary termination of prepayment. Upon prepayment in full sums held in escrow for taxes and hazard insurance shall be released to the mortgagor promptly.

§ 203.552 Fees and charges after endorsement.

(a) The mortgagee may collect reasonable and customary fees and charges from the mortgagor after insurance endorsement only as follows:

(1) Late charges as set forth in § 203.25;

(2) Charges for processing or reprocessing a check returned as uncollectible; (Where bank policy permits, the mortgagee must deposit a check for collection a second time before assessing a bad check charge);

(3) Fees for processing a change of ownership of the mortgaged property;

(4) Fees and charges for arranging a substitution of liability under the mortgage in connection with the sale or transfer of the property;

(5) Charges for processing a request for credit approval of an assumptor or substitute mortgagor;

(6) Charges for substitution of a hazard insurance policy at other than the expiration of term of the existing hazard insurance policy;

(7) Charges for modification of the mortgage involving a recorded agreement for extension of term or reamortization;

(8) Fees and charges for processing a partial release of the mortgaged property;

(9) Attorney's and trustee's fees and expenses actually incurred (including the cost of appraisals pursuant to § 203.368(e) and cost of advertising pursuant to § 203.368(h)) when a case has been referred for foreclosure in accordance with the provisions of this part after a firm decision to foreclose if foreclosure is not completed because of a reinstatement of the account. (No attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney or for the services of a collection attorney other than the attorney handling the foreclosure.)

(10) The service charge provided for by § 203.23(c) and escrow charges in accordance with § 203.23(a);

(11) A trustee's fee if the security instrument in deed-of-trust states provides for payment of such a fee for execution of a satisfactory, release, or trustee's deed when the deed of trust is paid in full; and

(12) Such other reasonable and customary charges as may be authorized by the Secretary. (This shall not include:

(i) Charges for servicing activities of the mortgagee or servicer;

(ii) Fees charged by independent tax servicer organizations which contract to furnish data and information necessary for the payment of property taxes,

(iii) "Satisfaction", "termination", or "reconveyance" fees when a mortgage is paid in full (other than as provided in paragraph (a)(11) of this section), or

(iv) The fee for recordation of a satisfaction of the mortgage in states where recordation is the responsibility of the mortgagee.)

(13) Where permitted by the security instrument, attorney's fees and expenses actually incurred in the defense of any suit or legal proceeding wherein the mortgagee shall be made a party thereto by reason of the mortgage; (No attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney.)

(14) Property preservation expenses incurred pursuant to § 203.377.

(b) "reasonable and customary" fees must be predicated upon the actual cost of the work performed including out-of-pocket expenses. Directors of HUD Area and Insuring Offices are authorized to establish maximum fees and charges which are reasonable and customary in their areas. Except as provided in this part, no fee or charge shall be based on a percentage of either the face amount of the mortgage or the unpaid principal balance due on the mortgage.

[41 FR 49736, Nov. 10, 1976, as amended at 52 FR 1330, Jan. 13, 1987]

§ 203.554 Enforcement of late charges.

(a) A mortgagee shall not commence foreclosure when the only default on the part of the mortgagor is the failure to pay a late charge or charges (§ 203.25), except as provided in § 203.556.

(b) A late charge attributable to a particular installment payment due under the mortgage shall not be deducted from that installment. However, if the mortgagee thereafter notifies the mortgagor of his obligation to pay a late charge, such a charge may be deducted from any subsequent payment or payments submitted by the mortgagor or on his behalf if this is not inconsistent with the terms of the mortgage. Partial payments shall be treated as provided in § 203.556.

(c) A payment may be returned because of failure to include a late charge only if the mortgagee notifies the mortgagor before imposition of the charge of the amount of the monthly payment, the date when the late charge will be imposed and either the amount of the late charge or the total amount due when the late charge is included.

[42 FR 15680, Mar. 23, 1977]

§ 203.556 Return of partial payments.

(a) For the purpose of this section, a partial payment is a payment of any amount less than the full amount due under the terms of the mortgage at the time the payment is tendered, including late charges.

(b) Except as provided in this section, the mortgagee shall accept any partial payment and either apply it to

the mortgagor's account or identify it with the mortgagor's account and hold it in a trust account pending disposition. When partial payments held for disposition aggregate a full monthly installment they shall be applied to the mortgagor's account, thus advancing the date of the oldest unpaid installment but not the date on which the account first became delinquent.

(c) If the mortgage is not in default, a partial payment may be returned to the mortgagor with a letter of explanation.

(d) If the mortgage is in default, a partial payment may be returned to the mortgagor with a letter of explanation in any of the following circumstances:

(1) When payment aggregates less than 50 percent of the amount then due;

(2) The payment is less than the amount agreed to in a forbearance plan, whether or not reduced to writing;

(3) The property is occupied by a tenant who is paying rent and the rentals are not being applied to the mortgage payments;

(4) Foreclosure has been commenced. (Foreclosure is commenced when the first action required for foreclosure under applicable law is taken.)

(e) Under the following circumstances the mortgagee may return any partial payment received more than 14 days after the mortgagee has mailed to the mortgagor a statement of the full amount due, including late charges, and a notice of intention to return any payment less than such amount.

(1) Four or more monthly installments are due and unpaid, or

(2) A delinquency of any amount has continued for at least six months since the account first became delinquent.

[42 FR 15680, Mar. 23, 1977]

§ 203.558 Handling prepayments.

(a) Notwithstanding the terms of the mortgage, the mortgagee may accept a prepayment at any time and in any amount. Except as set out below, monthly interest on the debt must be calculated on the actual unpaid principal balance of the loan.

(b) With respect to mortgages insured before August 2, 1985, if a prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the first day of the month following expiration of the 30-day notice period as provided in the mortgage, or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment.

(c) With respect to mortgages insured on or after August 2, 1985, the mortgagee shall not require 30 days' advance notice of prepayment, even if the mortgage instrument purports to require such notice. If the prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the next installment due date (the first day of the month), or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment.

(d) If the installment due date (the first day of the month) falls on a nonworking day, the mortgagor's notice of intention to prepay under paragraph (b) or the prepayment shall be timely if received on the next working day.

(e) If the mortgagee fails to meet the full disclosure requirements of paragraphs (b) and (c) of this section, the mortgagee may be subject to forfeiture of that portion of the interest collected for the period beyond the date that prepayment in full was received and to such other actions as are provided in Part 25 of this title.

[50 FR 25914, June 24, 1985]

MORTGAGEE ACTION AND FORBEARANCE

§ 203.600 Mortgage collection action.

Subject to the requirements of this subpart, mortgagees shall take prompt action to collect amounts due from mortgagors to minimize the number of accounts in a delinquent or default

status. Collection techniques must be adapted to individual differences in mortgagors and take account of the circumstances peculiar to each mortgagor.

§ 203.602 Delinquency notice to mortgagor.

The mortgagee shall give notice to each mortgagor in default on a form supplied by the Secretary or, if the mortgagee wishes to use its own form, on a form approved by the Secretary, no later than the end of the second month of any delinquency in payments under the mortgage. If an account is reinstated and again becomes delinquent, the delinquency notice shall be sent to the mortgagor again, except that the mortgagee is not required to send a second delinquency notice to the same mortgagor more often than once each six months. The mortgagee may issue additional or more frequent notices of delinquency at its option.

§ 203.604 Contact with the mortgagor.

(a) [Reserved]

(b) The mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid. If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor, or make a reasonable attempt to arrange such a meeting within 30 days after such default and at lease 30 days before foreclosure is commenced, or at least 30 days before assignment is requested if the mortgage is insured on Hawaiian home land pursuant to section 247 or Indian land pursuant to section 248 or if assignment is requested under § 203.350(d) for mortgages authorized by section 203(q) of the National Housing Act.

(c) A face-to-face meeting is not required if:

(1) The mortgagor does not reside in the mortgaged property,

(2) The mortgaged property is not within 200 miles of the mortgagee, its servicer, or a branch office of either,

(3) The mortgagor has clearly indicated that he will not cooperate in the interview,

(4) A repayment plan consistent with the mortgagor's circumstances is entered into to bring the mortgagor's account current thus making a meeting unnecessary, and payments thereunder are current, or

(5) A reasonable effort to arrange a meeting is unsuccessful.

(d) A reasonable effort to arrange a face-to-face meeting with the mortgagor shall consist at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched. Such a reasonable effort to arrange a face-to-face meeting shall also include at least one trip to see the mortgagor at the mortgaged property, unless the mortgaged property is more than 200 miles from the mortgagee, its servicer, or a branch office of either, or it is known that the mortgagor is not residing in the mortgaged property.

(e)(1) For mortgages insured pursuant to section 248 of the National Housing Act, the provisions of paragraphs (b), (c) and (d) of this section are applicable, except that a face-to-face meeting with the mortgagor is required, and a reasonable effort to arrange such a meeting shall include at least one trip to see the mortgagor at the mortgaged property, notwithstanding that such property is more than 200 miles from the mortgagee, its servicer, or a branch office of either. In addition, the mortgagee must document that it has made at least one telephone call to the mortgagor for the purpose of trying to arrange a face-to-face interview. The mortgagee may appoint an agent to perform its responsibilities under this paragraph.

(2) The mortgagee must also:

(i) Inform the mortgagor that HUD will make information regarding the status and payment history of the mortgagor's loan available to local credit bureaus and prospective creditors;

(ii) Inform the mortgagor of other available assistance, if any;

(iii) Notify the mortgagor that if the mortgage remains in default for more than 90 days, the mortgagee shall re-

quest the Secretary to accept an assignment of the mortgage;

(iv) Notify the mortgagor of the qualifications for forbearance relief from the mortgagee, if any, and that forbearance relief may be available from the Secretary if the mortgage is assigned; and

(v) Inform the mortgagor of the names and addresses of HUD officials to whom further communications may be addressed.

(Approved by the Office of Management and Budget under control number 2502-0340)

[41 FR 49736, Nov. 10, 1976, as amended at 51 FR 21873, June 16, 1986; 52 FR 48202, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 203.606 Pre-foreclosure review.

(a) Before initiating foreclosure, the mortgagee must ensure that all servicing requirements of this subpart have been met. The mortgagee may not commence foreclosure for a monetary default unless at least three full monthly installments due under the mortgage are unpaid after application of any partial payments that may have been accepted but not yet applied to the mortgage account.

(b) If the mortgagee determines that any of the following conditions has been met, the mortgagee may initiate foreclosure without sending the notices required by §§ 203.650 and 203.651, and without the delay in foreclosure required by paragraph (a) of this section:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days.

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage.

(3) The mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is not being applied to the mortgage debt.

(4) The property is owned by a corporation or partnership.

[52 FR 6915, Mar. 5, 1987]

§ 203.608 Reinstatement.

The mortgagee shall permit reinstatement of a mortgage, even after the institution of foreclosure proceedings, if the mortgagor tenders in a lump sum all amounts required to bring the account current, including foreclosure costs and reasonable attorney's fees and expenses properly associated with the foreclosure action, unless: (a) The mortgagee has accepted reinstatement after the institution of foreclosure proceedings within two years immediately preceding the commencement of the current foreclosure action, (b) reinstatement will preclude foreclosure following a subsequent default, or (c) reinstatement will adversely affect the priority of the mortgage lien.

§ 203.610 Relief for mortgagor in military service.

The mortgagee shall specifically give consideration to affording the mortgagor the benefit of relief authorized by §§ 203.345 and 203.346, if the mortgagor is "person in the military service" as that term is defined in the Soldiers and Sailors Civil Relief Act of 1940, as amended.

§ 203.614 Conditions of special forbearance.

(a) The Secretary may approve special forbearance relief by the mortgagee with respect to any loan insured under this part if the Secretary finds that default was due to circumstances beyond the mortgagor's control. Approval is given on condition that the mortgagor and mortgagee enter into a special forbearance agreement providing for:

(1) The increase, reduction, or suspension of regular mortgage payments for a specified forbearance period approved by the Secretary;

(2) The resumption of regular mortgage payments after the expiration of the forbearance period; and

(3) The payment of the total unpaid amount accruing prior to and during the forbearance period on or before the maturity date of the mortgage or on or before a date subsequent to the maturity date which is approved by the Secretary.

(b) The mortgagee may grant special forbearance relief without the approval of the Secretary subject to the following conditions:

(1) The mortgagor shall establish to the satisfaction of the mortgagee, whose finding shall be conclusive, that:

(i) The mortgagor does not own other property subject to a mortgage insured by the Secretary; and

(ii) The default was caused by circumstances beyond the control of the mortgagor.

(2) The written forbearance agreement shall:

(i) Provide for suspension or reduction of payments for a period not to exceed 18 months, or recognize that payments have already been suspended or reduced for a period not to exceed 18 months;

(ii) Provide for the resumption of regular mortgage payments after the expiration of the period of reduced or suspended payments; and

(iii) Provide for the repayment of the total unpaid amount accruing prior to and during the period of reduced or suspended payments on or before a date extending beyond the original maturity date for a period no longer than the period of forbearance.

§ 203.616 Recasting of mortgage.

(a) In addition to the special forbearance relief afforded in § 203.614, if the Secretary makes the finding required in paragraph (a) of that section, the Secretary may approve a modification of the terms of the mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage or over such longer period of time as the Secretary may approve. The modification agreement may be effective when executed or upon the termination of a forbearance period.

(b) The Secretary's approval for a recasting of a mortgage for the purpose of changing the amortization provisions shall not be required where the mortgagee makes the findings prescribed in § 203.614(b)(1). In such instances, the recasting shall be limited to the remaining term of the mortgage or a term extending not more than 10 years beyond the original maturity date. The Secretary shall be given notice of such modification within 30 days of the execution of the modification agreement.

(c) Recasting may be refused in the sole discretion of the mortgagee.

Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD

Source: Sections 203.640 through 203.659 appear at 52 FR 6915, Mar. 5, 1987, unless otherwise noted.

Effective Date Note: Sections 203.640 through 203.649 and the undesignated center heading set forth above were added, §§ 203.650 through 203.658 were revised, and §§ 203.659 and 203.660 were removed at 52 FR 6915–6919, Mar. 5, 1987. Before this rule becomes effective, the Department must revise its current mortgage assignment handbook, HUD Handbook 4330.2, to reflect the changes made by this rule. Additionally, the Department must select a contractor to administer the payments system. The rule will be made effective as soon as the Department accomplishes these tasks, and an announcement of the effective date will be published in the Federal Register at least 30 days before the effective date. The text of §§ 203.650 through 203.660 remaining in effect until further notice follows the text of § 203.658.

§ 203.640 Temporary mortgage assistance payments.

(a) The Secretary may make temporary mortgage assistance payments (TMAP) to the mortgagee on behalf of a mortgagor who owns the property, except for property subject to a mortgage insured pursuant to section 247 (see § 203.665) or section 248 of the National Housing Act (see § 203.664), when the following conditions are met:

(1) The mortgagee has informed the mortgagor (under § 203.650) that it intends to foreclose the mortgage;

(2) At least three full monthly installments due on the mortgage are unpaid after the application of any partial payments that may have been accepted but not yet applied to the mortgage account;

(3) The mortgagor's default has been caused by circumstances that are beyond the mortgagor's control and that render the mortgagor temporarily unable to correct the delinquency

within a reasonable time and to make full mortgage payments. For the purpose of evaluating this criterion, payments will be applied to the oldest unpaid installment and the date of default will be 30 days after the due date of the oldest unpaid installment. Once the date of default is established for purposes of processing the request for foreclosure relief under § 203.652, it will not be affected by subsequent payments;

(4) There is a reasonable prospect that the mortgagor will be able to:

(i) Resume full mortgage payments after a period of reduced or suspended payments, not to exceed 36 months;

(ii) Begin repayment of TMAP at a time designated by the Secretary; and

(iii) Pay the mortgage in full by its maturity date or by such extended maturity date (not more than 10 years after original maturity) as the Secretary determines, with the consent of the mortgagee. The amount and duration of the mortgage delinquency will be considered in determining whether this criterion is met;

(5) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the National Housing Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver;

(6) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the National Housing Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver; and

(7) The Secretary determines that such payments are necessary to avoid foreclosure and are not inappropriate in the case of the mortgagor.

(b) A mortgagor is not eligible for TMAP in any case where:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days;

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage;

(3) The mortgagee is prevented by law from initiating foreclosure of the mortgage;

(4) The mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is not being applied to the mortgage debt;

(5) TMAP have been previously provided on behalf of the mortgagor—unless for a period of at least 12 months from the time previous assistance payments were terminated, the mortgagor made full payments to the mortgagee required under the mortgage, and made any payments to the Secretary required under the repayment agreement;

(6) The property is owned by a corporation or partnership; or

(7) The mortgagor is unwilling to execute such documents as the Secretary requires (including security instruments creating a lien on the property) to assure repayment of the TMAP to the Secretary.

§ 203.641 Execution of security instruments and amount of temporary mortgage assistance payments.

(a) Before temporary mortgage assistance payments are made, the mortgagor must execute security instruments creating a lien on the property to assure repayment to the Secretary.

(b) Monthly TMAP on behalf of a mortgagor will be in an amount sufficient to assure that the mortgagor pays no more than 35 percent of net effective income for housing expenses during the period when TMAP is being provided. For this purpose, a mortgagor's net effective income is monthly gross income less Federal income taxes; and housing expenses are the sum of the mortgagor's usual monthly expenses for maintenance, utilities, hazard insurance, and the monthly mortgage payment, including escrowed amounts. A mortgagor may contribute a greater portion of net ef-

fective income if he or she submits a written request to do so.

(c) The initial disbursement of TMAP may include the first monthly payment computed in accordance with paragraph (b) of this section, together with any additional sum necessary to make the payments on the mortgage current.

[52 FR 6915, Mar. 5, 1987, as amended at 52 FR 37938, Oct. 13, 1987]

§ 203.642 Period of temporary mortgage assistance payments.

(a) TMAP will terminate on the earliest of the following dates:

(1) The expiration of the TMAP agreement. This agreement will provide for assistance for a period of not longer than 18 months after the effective date of the first monthly TMAP, except that the agreement period may be extended to cover a total time period not to exceed 36 months where the Secretary has determined that an extension is necessary to avoid foreclosure and that there is a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4). The effective date of the first monthly TMAP will be the due date of the monthly payment on the insured mortgage for which the first monthly TMAP payment, excluding any TMAP advanced to pay for accumulated arrearages, is credited;

(2) The date on which three payments of the mortgagor's portion of the full monthly payment are due and unpaid by the mortgagor, except that TMAP may be continued if the Secretary determines that (i) the mortgagor's default under the TMAP agreement was caused by circumstances beyond the mortgagor's control; and (ii) the extension is justified under paragraph (a)(1) of this section;

(3) The date on which the mortgagor conveys title to the property;

(4) The date on which the Secretary determines that, because of the mortgagor's financial circumstances—

(i) Payments are no longer necessary to avoid foreclosure, or

(ii) There is no longer a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4); or

(5) The date on which the Secretary determines that the decision to approve assistance was based on fraudulent information.

(b) TMAP will be made only to the extent approved by the Congress in appropriation Acts.

§ 203.643 Review of mortgagor's financial circumstances during TMAP period.

(a) While assistance payments are being provided, the mortgagor must provide, in a form prescribed by the Secretary, information as to occupancy, employment, family composition and income whenever a review of the TMAP is being undertaken under paragraph (c) of this section. When HUD requests such information, it will offer to furnish the mortgagor with a referral to a local agency approved by HUD to provide homeownership counseling in connection with this program, or, if there are no such agencies, HUD will offer to provide homeownership counseling directly.

(b) TMAP will be terminated if the mortgagor fails to furnish the information required in paragraph (a) within 15 days after the date of the Secretary's request, except that TMAP may be continued if the Secretary determines that the failure to furnish the information was caused by circumstances beyond the mortgagor's control.

(c) The amount of monthly payment due from the mortgagor under the TMAP agreement while assistance payments are being provided will be reviewed and, if appropriate, modified by the Secretary in consultation with the mortgagor, under the following circumstances:

(1) Immediately before expiration of the temporary mortgage assistance payment agreement;

(2) When the mortgagor is in default under the TMAP agreement for two months or longer;

(3) When a mortgagor requests review for good cause, or when HUD discovers that TMAP was approved based on significantly inaccurate information or that the mortgagor's circumstances have changed substantially. (But see § 203.641(b).)

(d) The Secretary may increase or decrease the amount of TMAP from time to time to reflect changes in the escrow requirements.

(Approved by the Office of Management and Budget under control number 2502-0159)

[52 FR 6915, Mar. 5, 1987, as amended at 52 FR 37938, Oct. 13, 1987]

§ 203.644 Repayment of temporary mortgage assistance payments.

(a) On the date TMAP are terminated, the TMAP loan will start to accrue interest at the lesser of the quarterly average dominant market rate for FHA and VA insured mortgages (as determined by HUD's weekly survey of mortgage originators) which was in effect on the date TMAP assistance was approved, or the rate specified in the FHA-insured first mortgage. The assistance will be repaid to the Secretary under a repayment agreement executed in accordance with paragraphs (b) and (c) of this section.

(b) The repayment agreement, to be executed by the mortgagor and the Secretary upon termination of TMAP, will provide for monthly payments by the mortgagor:

(1) In an amount determined by the Secretary upon an examination of the mortgagor's financial condition and circumstances, and the mortgagor's ability to contribute to the mortgage payments; or

(2) In such other amount or amounts as may be prescribed by regulation at the time of execution of any repayment agreement.

(c) The mortgagor must provide the information required in § 203.643(a) to the Secretary at least annually and at such other times as the Secretary may require, until all TMAP have been repaid.

(d) The repayment agreement will be reviewed from time to time at the request of the mortgagor or at the initiation of the Secretary, and the amount will be adjusted, if appropriate, based on the mortgagor's current financial circumstances.

(e) All assistance must be repaid by no later than the end of the remaining term of the mortgage, extended, if necessary, by up to 10 years.

(f) After termination of TMAP, the mortgagor must execute any modifications to the security instruments (§ 203.641) as the Secretary may require to assure repayment to the Secretary.

(Approved by the Office of Management and Budget under control number 2502-0159)

§ 203.645 Assignment of mortgage, with forbearance.

(a) For a mortgage other than one insured pursuant to section 247 or section 248 of the National Housing Act (§ 203.43i or § 203.43h of this part), the Secretary will accept an assignment and provide forbearance if the conditions of § 203.640 (a)(1) through (a)(6) except (a)(4)(ii) are met, and the Secretary determines that assignment is necessary to avoid foreclosure and TMAP would be inappropriate in the case of the mortgagor. Among other grounds, TMAP will be determined to be inappropriate if the mortgagee refuses to accept TMAP (in violation of § 203.658(b)), or if extension of the mortgage maturity (by not more than 10 years after the original maturity) would be necessary in order for the mortgagor to afford repayment, and the mortgagee is unwilling to extend the maturity date. TMAP will also be determined to be inappropriate if a mortgagor is unable to execute the documents required by the Secretary to assure repayment of a TMAP loan (§ 203.640(b)(7)), where the inability to execute the necessary documents is caused by circumstances beyond the mortgagor's control. For mortgages insured pursuant to section 247 of the National Housing Act, see §§ 203.350(c) and 203.665. For mortgages insured pursuant to section 248 of the National Housing Act, see §§ 203.350(b) and 203.664.

(b) Notwithstanding the provisions of paragraph (a) of this section, the mortgage is not eligible for assignment in any case where:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days;

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing

that he or she has no intention of fulfilling his or her obligation under the mortgage;

(3) The mortgagee is prevented by law from initiating foreclosure of the mortgage;

(4) The mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is not being applied to the mortgage debt;

(5) TMAP have been paid on behalf of the mortgagor within twelve months of the date of the assignment request to the Secretary, except that the Secretary may accept assignment of a mortgage, with respect to which TMAP were made immediately before the assignment, for the sole purpose of extending the term of repayment under the mortgage so that the mortgagor can make the full payments on the mortgage (in which case §§ 203.646—203.648 and § 203.649 (a)—(d) do not apply);

(6) The property is owned by a partnership or corporation; or

(7) TMAP were not provided because the mortgagor was unwilling to execute the documents required by the Secretary to assure repayment of the TMAP.

§ 203.646 Amount of forbearance.

The Secretary may allow all or a portion of the payments due under the mortgage to be postponed for a specified period of time under a forbearance agreement with the mortgagor. During this period of reduced or suspended payments, the mortgagor will not be required to pay more than 35 percent of net effective income for housing expenses. For this purpose, a mortgagor's net effective income is monthly gross income less Federal income taxes; and housing expenses are the sum of the mortgagor's usual monthly expenses for maintenance, utilities, hazard insurance, and the monthly mortgage payment, including escrowed amounts. A mortgagor may make payments of a greater portion of net effective income if he or she submits a written request to do so.

§ 203.647 Period of reduced or suspended payments.

The period of reduced or suspended payments will terminate on the earliest of the following dates:

(a) The expiration of the forbearance agreement. This agreement will provide for forbearance for a period of not longer than 18 months after the assignment of the mortgage, except that this agreement period may be extended to cover a total time not to exceed 36 months where the Secretary has determined that an extension is necessary to avoid foreclosure and that there is a reasonable prospect that the mortgagor will be able to make the payments specified in § 203.640(a)(4) (i) and (iii);

(b) The date on which three payments under the forbearance agreement are due and unpaid by the mortgagor, except that forbearance may be extended if the Secretary determines that: (i) The mortgagor's default under the forbearance agreement was caused by circumstances beyond the mortgagor's control; and (ii) the extension is justified under paragraph (a) of this section;

(c) The date on which the mortgagor conveys title to the property;

(d) The date on which the Secretary determines that, because of the mortgagor's financial circumstances—

(1) Reduced or suspended payments are no longer necessary to avoid foreclosure, or

(2) There is no longer a reasonable prospect that the mortgagor will be able to make the payments specified in § 203.640(a)(4) (i) and (iii); or

(e) The date on which the Secretary determines that the decision to approve assignment and forbearance was based on fraudulent information.

§ 203.648 Review of mortgagor's financial circumstances during period of reduced or suspended payments.

(a) During the period of reduced or suspended payments, the mortgagor must provide, in a form prescribed by the Secretary, information as to occupancy, employment, family composition and income whenever a review of the forbearance agreement is being undertaken under paragraph (c) of

this section. When HUD requests such information, it will offer to furnish the mortgagor with a referral to a local agency approved by HUD to provide homeownership counseling in connection with this program, or, if there are no such agencies, HUD will offer to provide homeownership counseling directly.

(b) Forbearance will be terminated if the mortgagor fails to furnish the information required in paragraph (a) of this section within 15 days after the date of the Secretary's request, except that forbearance may be continued if the Secretary determines that the failure to furnish the information was caused by circumstances beyond the mortgagor's control.

(c) The amount of the monthly payment due from the mortgagor under the forbearance agreement during the period of reduced or suspended payments will be reviewed and, if appropriate, modified by the Secretary in consultation with the mortgagor, under the following circumstances:

(1) Before HUD takes any action because of a mortgagor's monetary default;

(2) Immediately before expiration of the period of reduced or suspended payments;

(3) When the mortgagor is in default under the forbearance agreement for two months or longer; or

(4) When a mortgagor requests review for good cause, or when HUD discovers that forbearance was approved based on significantly inaccurate information or that the mortgagor's circumstances have changed substantially. (But see § 203.646.)

(d) The Secretary may increase or decrease the monthly payment the mortgagor must pay from time to time to reflect changes in escrow requirements.

(Approved by the Office of Management and Budget under control number 2502-0159)

§ 203.649 Payment of mortgage loan, including arrearages, after period of reduced or suspended payments.

(a) Interest continues to accrue on the outstanding principal balance in accordance with the terms of the mortgage. Interest starts to accrue on advances made by HUD on the mortgagor's behalf at the rate specified in the mortgage on the date the advance is made. Any amounts advanced by HUD as well as the amount due under the original mortgage note, including interest payments due, will be repaid to the Secretary under a forbearance agreement executed in accordance with paragraph (b) of this section.

(b) The forbearance agreement to be executed by the mortgagor and the Secretary upon termination of the period of reduced or suspended payments will provide for revised monthly payments by the mortgagor in an amount determined by the Secretary upon an examination of the mortgagor's financial condition and circumstances, and the mortgagor's ability to contribute to the mortgage payments. However, the revised monthly payment amount will not be less than the mortgagor's original monthly payment for principal and interest required under the mortgage note, plus monthly payments for current taxes, for current monthly service charges, for current assessments, and for current ground rents.

(c) The mortgagor must provide the information required in § 203.648(a) to the Secretary at least annually and at such other times as the Secretary may require, until the payments on the mortgage are current.

(d) The forbearance agreement will be reviewed from time to time at the request of the mortgagor or at the initiation of the Secretary, and, subject to the minimum payment requirement of paragraph (b) of this section, the amount will be adjusted, if appropriate, based on the mortgagor's current financial circumstances.

(e) The mortgage loan, including all arrearages, must be paid by no later than the end of the remaining term of the mortgage, extended, if necessary, by up to 10 years.

(Approved by the Office of Management and Budget under control number 2502-0159)

Assignment of Mortgages to HUD

Effective Date Note: Sections 203.650 through 203.658 were revised and §§ 203.659 and 203.660 and the undesignated center

heading set forth above were removed at 52 FR 6915—6919, Mar. 5, 1987. Before this rule becomes effective, the Department must revise its current mortgage assignment handbook, HUD Handbook 4330.2, to reflect the changes made by this rule. Additionally, the Department must select a contractor to administer the payments system. The rule will be made effective as soon as the Department accomplishes these tasks, and an announcement of the effective date will be published in the Federal Register at least 30 days before the effective date. The text of §§ 203.650 through 203.660 set forth below remains in effect until further notice.

§ 203.650 Assignment of mortgages.

(a) The Secretary will accept assignments of mortgages insured under this part in order to avoid foreclosure when the following conditions are met:

(1) The mortgagee has informed the mortgagor that it intends to foreclose the mortgage;

(2) At least three full monthly installments due on the mortgage are unpaid after application of any partial payments which may have been accepted but not yet applied to the mortgage account.

(3) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if the property has been leased or rented and the rental income has been applied to the mortgage delinquency or to effect repairs necessary to maintain the property in a safe and habitable condition or if such waiver is determined to be in the best interests of the Department.

(4) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary. This criterion may be waived by the Secretary if the income from such other property is the mortgagor's principal source of income.

(5) The mortgagor's default has been caused by circumstances beyond the mortgagor's control which render the mortgagor unable to correct the delinquency within a reasonable time or make full mortgage payments.

(6) There is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a period of reduced or suspended payments not exceeding 36 months and will be able to pay the mortgage in full by its maturity date extended, if necessary, by up to ten years.

(b) A mortgage shall not be eligible for assignment in any case where:

(1) The mortgaged property has been abandoned or vacant for more than 60 days.

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he has no intention of fulfilling his obligation under the mortgage; or

(3) The mortgagee is prevented by law from initiating foreclosure of the mortgage.

(4) The mortgagor owns two or more properties occupied by tenants who are paying rent, and the rental income from the property under review is not being applied to the mortgage on that property.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan 4, 1979]

§ 203.651 Preliminary notice to mortgagors.

In all cases, except as provided in § 203.606(b), prior to initiating any action required by law to foreclose the mortgage but not before three full monthly payments are due and unpaid, the mortgagee shall notify the mortgagor in a form approved by the Secretary that the mortgagor is in default, the mortgagee intends to foreclose unless the mortgagor cures the default, and the mortgagee is considering whether or not to request the Secretary to accept assignment of the mortgage.

[44 FR 1337, Jan. 4, 1979]

§ 203.652 Determination by mortgagee.

(a) In any case in which the mortgagee determines that all of the conditions of § 203.650(a) are met, it shall request the Secretary to accept assignment of the mortgage.

(b) Except as provided in § 203.606(b), in any case which the mortgagee determines that all of the conditions of § 203.650(a) are not met, it will advise the mortgagor that the mortgagor may, by letter or telephone, ask the Secretary to accept assignment of the mortgage. Such request must be received by the Secretary within 15 days after the mortgagee's

notice that it will not request acceptance of assignment. The mortgagee will delay initiation of foreclosure upon notice from the Secretary.

(c) The mortgagee shall notify the mortgagor of its determination under paragraph (a) or (b) of this section in a form approved by the Secretary.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.654 Preliminary review and determination by Secretary.

(a) The mortgagee and mortgagor shall promptly furnish to the Secretary all of the information requested to assist in a preliminary determination of whether or not to accept an assignment of the mortgage. Information requested of the mortgagor must be forwarded within 15 days of the date of Secretary's request.

(b) If after preliminary review, the Secretary determines that assignment should be accepted, the mortgagee shall assign the mortgage upon notification by the Secretary. The rate of interest to be charged on amounts forborne will be determined by the Secretary at this time, and it shall be the lower of the interest rate of the insured mortgage or the rate established under section 1803(c) of title 38, United States Code (for VA-guaranteed mortgages).

(c) If after preliminary review of the documents, the Secretary determines that assignment should not be accepted, the Secretary will notify the mortgagee and the mortgagor of the reasons for the determination and will advise the mortgagor that he/she may request further consideration. The mortgagor may present additional information or argument by mail or by telephone within 15 days of the notice or, alternatively, the mortgagor shall be entitled to present such information or argument in person at a conference which must be held in accordance with § 203.656 within 25 days of the notice.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979; 55 FR 283, Jan. 4, 1990]

§ 203.656 Conference.

The conference provided in § 203.654(c) shall be conducted by the Secretary's representative and shall not be an adversary proceeding or subject to formal rules of evidence. The mortgagor may be represented by an attorney or other representative and may call witnesses and present oral and documentary information. However, the Secretary's representative may not compel the attendance of witnesses or pay expenses of witnesses called by the mortgagor or on the mortgagor's behalf. Cumulative, repetitious or immaterial arguments or materials shall not be presented. The mortgagor shall be permitted to examine the material on which the Secretary's preliminary negative decision is based at or before the conference. The conference shall be held at the HUD office or at a mutually convenient place.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.658 Final decision.

The Secretary shall promptly advise the mortgagor and the mortgagee of the final decision in writing and by telephone if practical. If the Secretary determines not to accept assignment the mortgagor shall also be advised of the findings and the specific criteria not met by the mortgagor.

§ 203.659 Foreclosure.

(a) Except as provided in § 203.606(b), the mortgagee shall not initiate foreclosure before the mortgagor has had an opportunity to request the Secretary to accept assignment of the mortgage and to support its request as provided in §§ 203.650 through 203.662.

(b) The mortgagee shall assign the mortgage to the Secretary when directed by the Secretary to do so.

(c) The mortgagee may initiate foreclosure when:

(1) The conditions of § 203.606(b) are met.

(2) The mortgagee does not receive notice from the Secretary within 20 days from the date of its notice to the mortgagor that the mortgagor has re-

quested the Secretary to accept assignment of the mortgage;

(3) The Secretary advises the mortgagee that the mortgagor failed to provide the information requested or to attend a conference, within the time required; and

(4) The Secretary advises the mortgagee that, after reconsideration of a preliminary decision, assignment will not be accepted.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.660 Time limits.

(a) All time limits provided in §§ 203.650 through 203.662 shall be deemed to be calendar days unless otherwise expressly stated. When the last day for taking the required action falls on a Saturday, Sunday or legal holiday, the last day for taking such action shall be the next following regular working day.

(b) If a mortgagor fails to take required action within the time limits specified in §§ 203.650 through 203.662 he thereby loses his right to further consideration of assignment of the mortgage.

Assignment of Mortgages to HUD

Effective Date Note: Sections 203.650 through 203.658 were revised and §§ 203.659 and 203.660 and the undesignated center heading set forth above were removed at 52 FR 6915—6919, Mar. 5, 1987. Before this rule becomes effective, the Department must revise its current mortgage assignment handbook, HUD Handbook 4330.2, to reflect the changes made by this rule. Additionally, the Department must select a contractor to administer the payments system. The rule will be made effective as soon as the Department accomplishes these tasks, and an announcement of the effective date will be published in the Federal Register at least 30 days before the effective date. The effectiveness of §§ 203.650 through 203.658 set forth below is pending the above-mentioned actions together with notification by publication in the Federal Register at a later date.

§ 203.650 Assignment of mortgages; Disclosure.

(a) Except as provided in § 203.606(b), the mortgagee shall, before initiating any action required by law to foreclose the mortgage, notify the mortgagor in a document approved by the Secretary that the mortgagor is in default, that the mortgagee intends to foreclose unless the mortgagor cures the default, and that the mortgagor may be eligible for assistance from HUD under this subpart. This notice may not be given before three full monthly payments are due and unpaid.

(b) The mortgagor discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0159, 2502-0268, and 2502-0059)

[52 FR 6918, Mar. 5, 1987, as amended at 54 FR 39693, Sept. 27, 1989]

§ 203.651 Determination by mortgagee.

(a) In any case in which the mortgagee determines that all of the conditions of either § 203.640(a) or § 203.645(a) have been met, the mortgagee must request that the Secretary provide assistance under this subpart, and must delay the initiation of foreclosure.

(b) Except as provided in § 203.606(b), in any case in which the mortgagee determines that the mortgagor is not eligible under § 203.640 or § 203.645, the mortgagee must advise the mortgagor that the mortgagor may ask the HUD Field Office Manager, by letter or telephone, to provide mortgage foreclosure relief in accordance with these regulations. If the mortgagor makes such a request to the HUD Field Office Manager by telephone, it must be made within 15 days after the date of the mortgagee's notice. If such a request to HUD is in writing, it must be received within 15 days after the date of the mortgagee's notice.

(c) The mortgagee must send the notice described in paragraph (a) or (b) of this section in writing in a document approved as to form by the Secretary.

§ 203.652 Preliminary review and determination by Secretary.

(a) Promptly upon receiving a request from the mortgagor for assistance under §§ 203.640 through 203.656 of this part, the Secretary will notify the mortgagee of the request and the mortgagee must delay the initiation of foreclosure. The Secretary will furnish the mortgagor with a list of local agencies approved by HUD to provide homeownership counseling in connection with this program.

(b) The mortgagee and mortgagor must promptly furnish to the Secretary all of the information requested to assist in a preliminary determination of whether or not to provide assistance under this subpart. Information requested of the mortgagor or the mortgagee must be received by the Secretary within 15 days after the date of the Secretary's notice.

(c) After receipt of the required information, the Secretary will:

(1) Notify the mortgagor and the mortgagee that the mortgagor is not eligible for TMAP or for assignment, and the reasons for this determination; or

(2) Notify the mortgagor and the mortgagee:

(i) That the mortgagor is eligible for TMAP; and

(ii) Of the amount and term of the payments that the mortgagor will be required to make during the period of reduced or suspended payments; or

(3) Notify the mortgagor and the mortgagee that assignment of the mortgage will be accepted and notify the mortgagor of the amount and term of the payments the mortgagor will be required to make during the period of reduced or suspended payments; or

(4) Request that the mortgagee provide additional forbearance to the mortgagor.

(d) If the mortgagor is notified of ineligibility, the mortgagor may present additional written information or argument relating to his or her eligibility for mortgage foreclosure relief within 15 days after the date of the Secretary's notice (provided for under paragraph (c)(1) of this section). Alternatively, the mortgagor may present such information or argument in person at a conference. A conference may be requested by telephone or in writing if the request is received within 15 days after the date of the Secretary's notice under paragraph (c)(1) of this section. The conference will be conducted in accordance with § 203.653 and must be held within 25 days of the date of the Secretary's notice under paragraph (c)(1) of this section.

(e) If the mortgagor is determined to be eligible for TMAP or assignment, the mortgagor will be asked to meet with the Secretary's representative to discuss the amount and term of the mortgagor's payments under the TMAP or forbearance agreement to be executed.

(Approved by the Office of Management and Budget under control number 2502-0169)

§ 203.653 Conference.

The conference to contest the Secretary's preliminary determination of ineligibility will be conducted by the Secretary's representative and will not be an adversary proceeding or subject to formal rules of evidence. The mortgagor may be represented by an attorney or other representative and may call witnesses and present oral and documentary information. However, the Secretary's representative may not compel the attendance of witnesses, or pay the expenses of witnesses called by the mortgagor or on the mortgagor's behalf. Cumulative, repetitious or immaterial arguments or materials shall not be presented. The mortgagor will be permitted, at or before the conference, to examine the material on which the Secretary's preliminary determination is based. The conference will be held at the HUD office, or at a mutually convenient place.

§ 203.654 Final decision.

The Secretary will promptly advise the mortgagor and the mortgagee of the final decision in writing. If the Secretary determines to approve TMAP, or to accept an assignment of the mortgage and provide forbearance

in accordance with § 203.645, or to provide forbearance in accordance with § 203.664 or § 203.665, the mortgagor will be asked to meet with the Secretary's representative to discuss the amount and term of the payments that the mortgagor will be required to make under the TMAP or forbearance ageement to be executed. If the Secretary determines not to approve TMAP, and neither to accept an assignment of the mortgage under § 203.645 nor to provide forbearance in accordance with § 203.664 or § 203.665, the Secretary will advise the mortgagor of the findings and the specific criteria not met by the mortgagor.

§ 203.656 Time limits.

(a) All the time limits provided in §§ 203.640 through 203.652, and in §§ 203.664 and 203.665 are calendar days unless otherwise expressly stated. When the last day for taking the required action falls on a Saturday, Sunday, or legal holiday, the last day for taking the action is the next following regular work day.

(b) If a mortgagor fails to take a required action within the time limits specified in §§ 203.640 through 203.652, 203.664, and 203.665, he or she thereby loses his or her right to further consideration for relief. However, where the mortgagor demonstrates good cause for missing a time limit for action, the mortgagee or the Secretary will consider the application after the time has expired.

§ 203.658 Foreclosure.

(a) Except as provided in § 203.606(b), the mortgagee must not initiate foreclosure before the mortgagor has had an opportunity to request the Secretary to provide foreclosure relief under these regulations and to support his or her request as provided in §§ 203.640 through 203.656.

(b) The mortgagee must accept any TMAP from the Secretary and credit the payments to the mortgagor's account.

(c) The mortgagee must assign the mortgage to the Secretary when directed by the Secretary to do so.

(d) The mortgagee may initiate foreclosure when:

(1) The conditions of § 203.606(b) are met;

(2) The mortgagee does not receive notice from the Secretary, within 25 days from the date of its notice to the mortgagor under § 203.651, that the mortgagor has requested assistance; or

(3) The Secretary advises the mortgagee that it may proceed with foreclosure.

Mortgages in Default on Property Located on Indian Reservations

§ 203.664 Processing defaulted mortgages on property located on Indian land.

(a) *Assignment.* Before a mortgagee requests that the Secretary accept assignment (under § 203.350(b)) of a mortgage insured pursuant to section 248 of the National Housing Act (§ 203.43h of this part), the mortgagee must submit documents showing that the requirements of § 203.604 have been met and must provide all information in its possession concerning the mortgagor's eligibility for relief under this section.

(b) *Forbearance.* (1) The Secretary will make forbearance relief available to a mortgagor where the mortgage is assigned in accordance with § 203.350(b), if:

(i) The mortgagor's default has been caused by circumstances that are beyond the mortgagor's control and that render the mortgagor unable to correct the delinquency within a reasonable time and to make full mortgage payments. For the purpose of evaluating this criterion, payments will be applied to the oldest unpaid installment and the date of default will be 30 days after the due date of the oldest unpaid installment. Once the date of default is established for purposes of processing the request for relief, it will not be affected by subsequent payments;

(ii) There is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a period of reduced or suspended payments not to exceed 36 months and will be able to pay the mortgage in full by its maturity date or by such extended maturity date (not more than

10 years after original maturity) as the Secretary determines;

(iii) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver;

(iv) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver;

(v) The mortgagor furnishes the Secretary within 15 days of the Secretary's request all the information requested to assist in a preliminary determination of whether or not to forbear.

(vi) The mortgagor discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(2) The Secretary will not forbear where:

(i) The mortgaged property has been abandoned or has been vacant for more than 60 days;

(ii) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage; or

(iii) The mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is not being applied to the mortgage debt.

(3) The request for forbearance will be processed as follows:

(i) Promptly after receiving a request from the mortgagor for information about forbearance, the Secretary will furnish the mortgagor with the names of any local agencies approved by HUD to provide homeownership counseling in connection with the assignment (with forbearance) program.

(ii) The mortgagor and mortgagee must furnish the Secretary, within 15 days of the date of the Secretary's request, all the information requested to assist in a preliminary determination of whether or not to forbear.

(iii) After review of the documents, the Secretary will notify the mortgagor of the preliminary determination whether or not the mortgagor is eligible for forbearance. If the Secretary determines that the mortgagor is ineligible, the Secretary will notify the mortgagor of the reasons for the determination and will advise the mortgagor that he or she may request further consideration.

(iv) The mortgagor may present additional written information or argument relating to his or her eligibility for forbearance, including the amount of any proposed relief, within 15 days after the date of the Secretary's notice of preliminary determination. Alternatively, the mortgagor may present such information or argument in person at a conference, if the oral or written request is received within 15 days after the date of the Secretary's notice of preliminary determination. The conference will be conducted in accordance with § 203.653 and must be held within 25 days of the date of the Secretary's notice of preliminary determination.

(v) The Secretary will notify the mortgagor of the final decision on eligibility in accordance with § 203.654.

(vi) Time limits in this section apply as described in § 203.656.

(4) The amount forborne, period of forbearance, periodic review of mortgagor's circumstances and payment of the mortgage after forbearance will be in accordance with §§ 203.646 through 203.649.

(Approved by the Office of Management and Budget under control number 2502-0159)

[52 FR 6919, Mar. 5, 1987, as amended at 54 FR 39693, Sept. 27, 1989; 55 FR 11905, Mar. 30, 1990]

MORTGAGES IN DEFAULT ON PROPERTY LOCATED ON HAWAIIAN HOME LANDS

§ 203.665 Processing defaulted mortgages on property located on Hawaiian home lands.

(a) *Assignment.* Before a mortgagee requests the Secretary to accept assignment (under § 203.350(c)) of the mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

(b) *Forbearance.* (1) The Secretary will make forbearance relief available to a mortgagor where the mortgage is assigned in accordance with § 203.350(c), if all of the conditions of § 203.650(a)(3) through (a)(6) are met, and none of the conditions specified in paragraph § 203.650(b)(1) or (b)(2) exist, and the mortgagor and mortgagee furnish the Secretary, within 15 days of the date of the Secretary's request, all the information requested to assist in a preliminary determination of whether or not to forbear.

(2) The amount forborne, period of reduced or suspended payments, review of the mortgagor's circumstances, and payment of the mortgage after the period of reduced or suspended payments, will be in accordance with policies for assignments accepted under § 203.650.

(Information collections contained in paragraphs (a) and (b) of this section have been approved by the Office of Management and Budget under control numbers 2502-0340 and 2502-0169, respectively.)

[55 FR 283, Jan. 4, 1990]

ASSIGNMENT AND FORBEARANCE—PROPERTY IN ALLEGANY RESERVATION OF SENECA INDIANS

§ 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians.

(a) *Applicability.* This section applies to mortgages authorized by section 203(q) of the National Housing Act (§ 203.43j) only if the default occurred before the mortgagor and the lessee execute a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

(b) *Assignment (mandatory acceptance).* Before a mortgagee requests the Secretary to accept an assignment of a mortgage under the first sentence of § 203.350(d) where the mortgagor is in monetary default, the mortgagee must submit documents showing that the requirements of § 203.604 have been met and must provide all information in its possession concerning the mortgagor's eligibility for relief as set forth in § 203.664.

(c) *Assignment (discretionary acceptance).* Before a mortgagee requests the Secretary to exercise his or her discretion to accept an assignment of a mortgage under the second sentence of § 203.350(d) where the mortgagor is in non-monetary default, the mortgagee must provide all information in its possession concerning the mortgagor's eligibility for relief as set forth in § 203.664, except § 203.664(a)(1)(ii) and (iii).

(d) *Forbearance.* The Secretary may make forbearance relief on any terms and conditions which he or she in his or her discretion deems appropriate.

[53 FR 13405, Apr. 25, 1988]

OCCUPIED CONVEYANCE

§ 203.670 Conveyance of occupied property.

(a) It is HUD's policy to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds, consistent with the need to preserve and maintain urban residential areas and communities.

(b) The Secretary will accept conveyance of an occupied property containing one to four residential units if the Secretary finds that:

(1) An individual residing in the property suffers from a temporary illness or injury that would be aggravated by the process of moving from the property, and that the individual meets the eligibility criteria in § 203.674(a); or

(2) It is in the Secretary's interest to accept conveyance of the property occupied under § 203.671, the property is habitable as defined in § 203.673, and

each occupant who intends to remain in the property after the conveyance meets the eligibility criteria in § 203.674(b).

(c) HUD consents to accept good marketable title to occupied property where 90 days have elapsed since the mortgagee notified HUD of pending acquisition, the Department has notified the mortgagee that it was considering a request for continued occupancy, and no subsequent notification from HUD has been received by the mortgagee.

[53 FR 874, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.671 Criteria for determining the Secretary's interest.

It is in the Secretary's interest to accept occupied conveyance when one or more of the following are met:

(a) Occupancy of the property is essential to protect it from vandalism from time of acquisition to the time of preparation for sale.

(b) The number of Secretary-owned, vacant, unsold home properties in the residential area in which the property is located exceeds the number of properties acquired by the Secretary in that area within the past six months.

(c) With respect to multi-unit properties, the marketability of the property would be improved by retaining occupancy of one or more units.

[45 FR 59563, Sept. 10, 1980]

§ 203.672 Residential area.

(a) For the purposes of occupied conveyance considerations, a residential area is any area which constitutes a local economic market for the purchase and sale of residential real estate. In making determinations of residential areas, substantial weight shall be given to delineations of such areas commonly used by persons active in the real estate industry in the affected area.

(b) HUD shall establish such residential areas within six (6) months of the publication of these regulations when HUD's current established patterns of dealing with the disposition of its acquired home property inventory and related recordkeeping does not coincide with paragraph (a) of this section. Under such circumstances the Secretary shall apply such established patterns in defining residential areas until the standards in paragraph (a) of this section are implemented.

[45 FR 59563, Sept. 10, 1980]

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is "habitable" if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more five percent of the fair market value of the property. The cost of abating any lead-based paint hazards in the property, as required by HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), is excluded from these repair cost limitations.

(b)(1) Each residential unit must contain:

(i) Heating facilities adequate for healthful and comfortable living conditions, taking into consideration the local climate;

(ii) Adequate electrical supply for lighting and for equipment used in the residential unit;

(iii) Adequate cooking facilities;

(iv) A continuing supply of hot and cold water; and

(v) Adequate sanitary facilities and a safe method of sewage disposal.

(2) The property shall be structurally sound, reasonably durable, and free from hazards that may adversely affect the health and safety of the occupants or may impair the customary use and enjoyment by the occupants. Unacceptable hazards include, but are not limited to, subsidence, erosion, flood, exposure to the elements, exposed or unsafe electrical wiring, or an accumulation of minor hazards, such as broken stairs.

(c) If repairs, including lead-based paint abatement, are to be made while the property is occupied, the occupant must hold the Secretary harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary relocation of the occupant is necessary during repairs, no reimburse-

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ment for relocation expenses will be provided to the occupant.

[53 FR 874, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.674 Eligibility for continued occupancy.

(a) Temporary occupancy because of illness or injury of an individual residing in the property will be limited to three months (unless extended by the Secretary), and will be permitted only if all the conditions in this paragraph (a) are met:

(1) A timely request is made in accordance with § 203.676, including the submittal of documents required in § 203.675(b)(4).

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, and to pay a fair market rent as determined by the Secretary. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(4) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished, or by a sales broker.

(5) The occupant discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(b) An occupant who does not meet the temporary illness or injury criteria is eligible for continued occupancy only if all the conditions in this paragraph (b) are met:

(1) A timely request is made in accordance with § 203.676.

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, to pay fair market rent as determined by the Secretary, and to pay the rent for the first month in advance at the time the lease is executed. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant will have been in occupancy at least 90 days before the date the mortgagee acquires title to the property.

(4) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(5) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished, or by a sales broker.

(6) The occupant discloses and verifies Social Security Number, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0268)

[53 FR 874, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988, as amended at 54 FR 39687, Sept. 27, 1989]

§ 203.675 Notice to occupants of pending acquisition.

(a) At least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title to the property, the mort-

gagee shall notify the mortgagor and each head of household who is actually occupying a unit of the property of its potential acquisition by HUD. The mortgagee shall send a copy of this notification to the appropriate HUD Field Office.

(b) The notice shall provide a brief summary of the conditions under which continued occupancy is permissible and advise them that:

(1) Potential acquisition of the property by the Secretary is pending;

(2) The Secretary requires that properties be vacant at the time of conveyance to the Secretary, unless the mortgagor or other occupant can meet the conditions for continued occupany in § 203.670, the habitability criteria in § 203.673, and the eligibility criteria in § 203.674;

(3) An occupant may request permission to remain in occupancy in the event of acquisition of the property by the Secretary by notifying the HUD Field Office in writing, with any required documentation, within 20 days of the date of the mortgagee's notice to the occupant;

(4) If an occupant seeks to qualify for continued occupancy under the temporary illness or injury provisions of § 203.674(a), the occupant shall provide to the HUD Field Office, at the time of the occupant's request for permission to remain in occupancy, documentation to support this claim. Documentation shall include an estimate of the time when the patient could be moved without severely aggravating the illness or injury, and a statement by a State-certified physician establishing the validity of the occupant's claim. HUD may require more than one medical opinion or may arrange an examination by a physician approved by HUD; and

(5) If an occupant fails to make a timely request, the property must be vacated before the scheduled time of acquisition.

(Approved by the Office of Management and Budget under control number 2502-0268)

[53 FR 875, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.676 Request for continued occupancy.

An occupant may request permission to continue to occupy the property following conveyance to the Secretary by notifying the HUD Field Office in writing, within 20 days after the date of the mortgagee's notice of pending acquisition. Verification of temporary illness or injury as described in § 203.675(b)(4) shall be submitted within this time period if an occupant seeks to qualify for continued occupancy under the provisions of § 203.674(a). The HUD Field Office will notify the mortgagee in writing that an occupied conveyance has been requested.

(Approved by the Office of Management and Budget under control number 2502-0268)

[53 FR 875, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.677 Decision to approve or deny a request.

(a) The HUD Field Office will provide written notification of its decision to an occupant who makes a timely request to continue to occupy the property. The decision of the HUD Field Office on this matter will be made by the Chief, Property Disposition. If the decision is to deny the request, the notice to the occupant will include a statement of the reason or reasons for the decision and of the occupant's right to appeal. The occupant may appeal HUD's decision within 20 days after the date of HUD's notice. The appeal must be addressed to the Field Office Manager and be in writing, and the occupant may provide documentation intended to refute the reasons given for HUD's decision. The occupant may also request an informal conference with a representative of the HUD Field Office Manager. A request for an informal conference must be made in writing within 10 days after the date of HUD's notice. The occupant may be represented at the conference by counsel or by other persons with pertinent expert knowledge or experience.

(b) After notification that HUD has denied a request for continued occupancy, the occupant, on his or her re-

quest, shall be permitted to review all relevant material in HUD's possession (including a copy of the inspection report if the request is denied because the property is not habitable as defined in § 203.673). Only material in HUD's possession that directly pertains to conditions for continued occupancy under §§ 203.670, 203.673, and 203.674 may be considered material relevant for an occupant's review under this paragraph. This review shall be limited to a review of material for purposes of the informal conference or the appeal of the Department's decision. The information will only be provided after request for an informal conference or appeal has been submitted to HUD.

(c) After consideration of an appeal, the HUD Field Office will notify the applicant in writing of HUD's final decision. This final decision will be made by the HUD Field Office Manager or a representative of the Field Office Manager (other than the Chief, Property Disposition). If the decision is to deny the occupant's request, the notice to the occupant will reflect consideration of the issues raised by the occupant.

(d) If, after consideration of an appeal, the Field Office Manager denies the request for new or additional reasons, the occupant will be afforded an opportunity to request that the Field Office Manager reconsider its decision under the provisions of paragraph (c) of this section.

[53 FR 875, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.678 Conveyance of vacant property.

(a) HUD will require that the property be conveyed vacant if the occupant fails to request permission to continue to occupy within the time period specified in § 203.676, or fails to request a conference or to appeal a decision to deny occupied conveyance within the time period specified in § 203.677(a).

(b) If the mortgagee has not been notified by HUD, within 45 days of the date of the mortgagee's notification of pending acquisition, that a request for continued occupancy is under consideration, the mortgagee shall convey the property vacant, unless otherwise directed by HUD.

[53 FR 875, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.679 Continued occupancy after conveyance.

(a) Occupancy of HUD-acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

(b) HUD will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action in any of the following situations:

(1) Failure of the occupant to execute the lease required by § 203.674 (a)(2) and (b)(2), or failure to pay the rental amount required, including the initial payment at the time of execution of the lease, or to comply with the terms of the lease;

(2) Failure of the occupant to allow access to the property upon request in accordance with § 203.674 (a)(4) and (b)(5);

(3) Necessity to prepare the property for sale; or

(4) Assignment of the property by the Secretary to a different use of program.

[53 FR 876, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.680 Approval of occupancy after conveyance.

When an occupied property is conveyed to HUD before HUD has had an opportunity to consider continued occupancy (e.g., where HUD has taken more than 90 days to make a final decision on continued occupancy in accordance with § 203.670(c)), a determination regarding continued occupancy will be made in accordance with the conditions for the initial approval of occupied conveyance. Any such determination shall be in accordance with HUD's obligations under the terms of any month-to-month lease that has been executed.

[53 FR 876, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

§ 203.681 Authority of HUD Field Office Managers.

Field Office Managers shall act for the Secretary in all matters relating to assignment and occupied conveyance determinations. The decision of the Field Office Manager under § 203.677 will be final and not be subject to further administrative review.

[53 FR 876, Jan. 14, 1988, and 53 FR 8626, Mar. 16, 1988]

PART 204—COINSURANCE

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AUTHORITY: Secs. 244, 211, National Housing Act (12 U.S.C. 1715z-9, 1715(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 41 FR 6446, Feb. 12, 1976, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 204.1 Incorporation by reference.

All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages under section 203(b) of the National Housing Act apply to mortgages, covering one- to four-family dwellings, to be insured under section 203(b) pursu-

ant to the coinsurance authority of section 244 of the National Housing Act except the following provisions:

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[41 FR 6446, Feb. 12, 1976, as amended at 45 FR 33967, May 21, 1980; 47 FR 29525, July 7, 1982; 51 FR 21874, June 16, 1986; 52 FR 8068, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48203, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988]

§ 204.2 Approval of coinsuring mortgagees.

(a) A mortgagee approved under § 203.1, § 203.2 or § 203.4 of this chapter and meeting the following special requirements may be approved as a coinsuring mortgagee under this part:

(1) It shall have sound capital funds (net worth) of a value of not less than $250,000;

(2) It shall submit evidence satisfactory to the Commissioner that it is capable of discharging full underwriting, servicing and property disposition responsibilities as required under instructions and standards issued by the Commissioner;

(3) It shall submit to such monitoring, auditing and review as the Commissioner may require;

(4) It shall submit a detailed audit report of its books made by an independent accountant satisfactory to the Commissioner, reflecting a condition satisfactory to him;

(5) It shall file with the Commissioner similar annual audits within 75 days of the closing of its fiscal year so long as its approval as a coinsuring mortgagee continues;

(6) It shall comply with any other conditions that the Commissioner may impose.

(b) Approval of a coinsuring mortgagee under this part may be withdrawn for the causes provided in § 25.9 of this chapter or for any of the following causes:

(1) Failure to maintain the required sound capital funds;

(2) Failure to properly perform underwriting, servicing, or property disposition functions in accordance with instructions and standards issued by the Commissioner;

(3) Failure of an originating mortgagee to discharge its responsibilities under a contract for coinsurance;

(4) Failure to make full payment to an investing mortgagee as required in this part;

(5) Such other causes as the Commissioner determines to be justified.

[41 FR 6446, Feb. 12, 1976, as amended at 52 FR 3612, Feb. 5, 1987]

§ 204.3 Authority to determine eligibility.

(a) A mortgagee approved for coinsurance is authorized to make determinations relating to the eligibility of the mortgage, the mortgagor, and the property, pursuant to instructions and standards issued by the Commissioner, for insurance of a mortgage with respect to any mortgage to be coinsured by the Commissioner and the mortgagee, except:

(1) Mortgages financing the sale of a property by a nonoccupant seller who acquired title to the property during the period beginning two years prior to the date of application for insurance and ending on the date of such application;

(2) Mortgages covering proposed construction in new subdivisions which have not been approved by the Commissioner.

(b) In making the determinations set forth in this section the mortgagee shall utilize only staff or fee appraisers, mortgage credit examiners, and inspectors approved by the Commissioner.

§ 204.4 Appraisal and inspection fees.

When the mortgagee determines the appraised value of the property, the eligibility of the property for insurance, and the maximum amount which may be insured, the mortgagee may collect from the mortgagor for its own use a fee not in excess of the appraisal fee and inspection fee, if required, provided in § 203.27(a)(3)(v).

[45 FR 30603, May 8, 1980, and 47 FR 29525, July 7, 1982]

§ 204.5 Mortgage servicing during coinsurance period.

Servicing functions during the period of coinsurance shall be performed only by the originating mortgagee or by an approved coinsuring mortgagee which agrees to assume the originating mortgagee's liability under the contract of coinsurance: *Provided however,* That the investing mortgagee may elect to transfer servicing to other than an approved coinsuring mortgagee which agrees to accept the liability if the investing mortgagee assumes the obligations of the originating mortgagee under the contract of coinsurance.

Waivers

§ 204.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations

§ 204.251 Definitions.

As used in this subpart the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative;

(b) "Act" means the National Housing Act, as amended;

(c) "FHA" means the Federal Housing Administration;

(d) "Mortgage" is defined at § 203.17(a)(1) of this chapter.

(e) "Mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators and assigns;

(f) "Mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner;

(g) "Originating mortgagee" means the original coinsured lender, or an assignee which has assumed responsibility for the original coinsured lender's liability under the coinsurance contract, with the approval of the Commissioner;

(h) "Investing mortgagee" means a lender approved by the Commissioner pursuant to §§ 203.1 through 203.6 of this chapter to which the coinsured mortgage has been sold, assigned or transferred and which has not assumed responsibility for the originating mortgagee's liability under the coinsurance contract, except as provided in § 204.5;

(i) "Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate by the Commissioner;

(j) "Contract of insurance" means the agreement evidenced by the issuance of a Mortgage Insurance Certificate incorporating by reference the regulations in this part and the applicable provisions of the Act;

(k) "Period of coinsurance" means a period of time beginning on the effective date of the Mortgage Insurance Certificate and ending on the date the 60th monthly amortization payment is actually made by the mortgagor;

(l) "Fully insured" means entitlement to the benefits, and subject to the conditions, of §§ 203.295 through 203.435 of this chapter;

(m) "MIP" means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance;

(n) "Maturity" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage;

(o) "Debentures" means registered, transferable securities which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States;

(p) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

[41 FR 6446, Feb. 12, 1976, as amended at 49 FR 12697, Mar. 30, 1984; 53 FR 34282, Sept. 6, 1988]

Endorsement and Contract of Insurance

§ 204.254 Application for insurance.

The mortgagee shall submit to the Commissioner, on forms prescribed by him, within 30 days after the date of closing the loan, evidence that the mortgage, the mortgagor, and the property are eligible for insurance, that the principal amount of the loan has been disbursed to the mortgagor or for his account, and evidence of such other matters as the Commissioner may require.

§ 204.255 Insurance of mortgage.

Upon compliance with the requirements of this part, the Commissioner will insure the loan as of the date of closing evidencing the insurance by the issuance of a Mortgage Insurance Certificate which will identify the regulations under which the loan is insured and the date of insurance.

§ 204.256 Reinsurance prohibited.

The mortgagee shall not obtain reinsurance of its share of any loss suffered under this part.

§ 204.257 Contract created by Mortgage Insurance Certificate.

The mortgage shall be a coinsured mortgage from the effective date of the Mortgage Insurance Certificate and continuing through the period of coinsurance; thereafter, the mortgage shall be fully insured until termination of the mortgage insurance contract. After the effective date of a Mortgage Insurance Certificate the Commissioner and the mortgagee shall be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage including the provisions of the regulations in this subpart and of the Act.

Mortgage Insurance Premiums—In General

§ 204.260 Mortgage insurance premiums for co-insured mortgages.

All of the provisions of §§ 203.260 through 203.269, concerning mortgage insurance premiums with respect to mortgages insured under 203(b) of the National Housing Act, apply to mortgages covering one- to four-family dwellings to be insured under 203(b) pursuant to the coinsurance authority of 244 of the National Housing Act.

[47 FR 30753, July 15, 1982]

Adjusted Mortgage Insurance Premium

§ 204.269 Discontinuance of adjusted premium charge.

Notwithstanding any provision in the mortgage instrument there shall be no adjusted mortgage insurance premium due the Commissioner on account of the prepayment of any mortgage.

Coinsurance Reserve

§ 204.270 Annual coinsurance reserve.

There shall be established by the Commissioner for each originating mortgagee an Annual Coinsurance Reserve which shall consist of credits and debits relating to all mortgages insured with respect to such mortgagee under this part during each calendar year.

§ 204.271 Credits to reserve.

(a) There shall be credited to each Annual Coinsurance Reserve on the date of receipt of a mortgage insurance premium, as follows: 28 percent of the initial MIP, 23 percent of the first annual MIP, 19 percent of the second annual MIP, and 15 percent of the third annual MIP.

(b) In the event the stop loss limit provided in § 204.321(d) becomes applicable, the Commissioner will pay to the coinsurer annually the premium income which would be credited to the Annual Coinsurance Reserve account under paragraph (a) of this section.

(c) If the coinsurance provisions of the mortgage insurance contract cease pursuant to § 204.284(a)(2) or (3), no portion of the MIP collected by the Commissioner for the premium year in which cessation occurred shall be credited to the Annual Coinsurance Reserve.

§ 204.272 Debits to reserve.

There shall be debited to each Annual Coinsurance Reserve all losses paid by the Commissioner for which the mortgagee is responsible pursuant to § 204.321(c), and all amounts due the Commissioner pursuant to § 204.284(a)(2).

§ 204.273 Distribution of reserve.

On the sixth anniversary of the establishment of an Annual Coinsurance Reserve with respect to any mortgage, or as soon thereafter as is practicable, the Commissioner will pay to the mortgagee the credit balance remaining in the reserve.

§ 204.274 Transfer of Annual Coinsurance Reserve.

MIP credits and loss debits shall not be transferred from any Annual Coinsurance Reserve established pursuant to § 204.270 to any other Annual Coinsurance Reserve of the same or a different mortgagee. If there is an approved transfer of servicing responsibility with respect to a coinsured mortgage, the mortgagee's share of insurance premiums received and losses occurring subsequent to the date of transfer shall be credited or debited to the Annual Coinsurance Reserve of the transferee.

§ 204.275 Mortgagee's participating share.

(a) The Commissioner will maintain a separate account of all receipts, disbursements and expenses attributable to the period of coinsurance for all mortgages coinsured in each calendar year. He will share with all coinsuring mortgagees the aggregate amount available for the mortgagees' participating share which shall consist of one-half of the actual net income realized for the coinsurance period.

(b) The Commissioner will pay to each coinsuring mortgagee, that portion of the aggregate amount available for the mortgagees' participating share in the proportion that the credit balance remaining in the mortgagees' Annual Coinsurance Reserve bears to the credit balance remaining in Annual Coinsurance Reserves for all mortgagees in the applicable year.

(c) In no event will a mortgagee receive an amount in excess of three-tenths of one percent of the total of the original principal obligations of the mortgages coinsured by such mortgagee in the applicable calendar year (exclusive of the mortgages for which coinsurance liability was assumed by another mortgagee and those transferred to full insurance pursuant to § 204.284(a)(2) or (3)) and of the mortgages originated in the applicable calendar year for which such mortgagee assumed coinsurance liability.

(d) The determination of the Commissioner as to the amount to be paid to any mortgagee from the mortgagees' participating share shall be final and conclusive.

TERMINATION

§ 204.280 Termination of insurance contract.

The contract of insurance shall be terminated if:

(a) The mortgage is paid in full prior to its maturity; or

(b) The mortgagee acquires the mortgaged property and notifies the Commissioner that no claim for insurance benefits has been made or will be made; or

(c) After foreclosure the property is redeemed; or

(d) The property is bid in and acquired at a foreclosure sale by a party other than the mortgagee; or

(e) The mortgagor and mortgagee jointly request termination. The mortgagee shall cancel the insurance endorsement on the Mortgage Insurance Certificate upon receipt of notice from the Commissioner that the contract of insurance is terminated.

§ 204.281 Notice of termination by mortgagee.

No contract of insurance shall be terminated until the Mortgagee has given written notice thereof to the Commissioner within 15 calendar days from the occurrence of one of the approved methods of termination set forth in this subpart.

[45 FR 31716, May 14, 1980]

§ 204.282 Notice and date of termination by Commissioner.

The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and of the effective termination date. The termination date shall be the last day of the month in which any one of the following events first occurs:

(a) The date of foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee, if the mortgagee notifies the Commissioner that no claim for insurance benefits has been or will be made;

(b) The date the mortgage was prepaid in full;

(c) The date a voluntary termination request is received by the Commissioner.

§ 204.283 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated.

§ 204.284 Termination of coinsurance provision of the insurance contract.

(a) The coinsurance provision of the mortgage insurance contract shall cease and the mortgage shall be fully insured upon:

(1) Expiration of the period of coinsurance; or

(2) Failure or inability of the originating mortgagee to perform its servicing responsibilities because of dissolution, bankruptcy or withdrawal of approval as a mortgagee: *Provided*, That the originating mortgagee will remain liable for any losses under the coinsurance provisions of the mortgage insurance contract;

(3) The transfer of all servicing functions from the originating mortgagee or approved coinsuring mortgagee to another servicer by an investing mortgagee upon a showing of good cause and a finding by the Commissioner that such transfer is for good cause and in the best interests of FHA.

(b) If the mortgagee agrees to provide forbearance relief, or recasting or forbearance relief for military personnel, pursuant to § 204.294, the Commissioner upon request may agree to terminate the coinsurance provisions of the mortgage insurance contract after which the mortgage will be fully insured on the due date of the 60th scheduled monthly payment under the original terms of the mortgage: *Provided*, That payments are current on such date under the terms of the forbearance or recasting agreement.

Default Under Mortgage

§ 204.290 Definition of default.

If the mortgagor fails to make any payment, or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

§ 204.291 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after:

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) The first failure to make a monthly payment which is not covered by subsequent payments made by the mortgagor when such subsequent payments are applied to the overdue monthly payments in the order in which they became due.

§ 204.292 Notice of default.

The mortgagee shall, within 60 days after the date of default as defined in this part, give written notice thereof to the Commissioner on a form prescribed by him, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 204.293 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred: *Provided,* The mortgagor pays to the mortgagee such expenses as the mortgagee has incurred in connection with the foreclosure proceedings and the mortgagee gives written notice of reinstatement to the Commissioner.

§ 204.294 Forbearance relief and recasting of mortgage.

All of the provisions of §§ 203.340 through 203.346 of this chapter shall apply to mortgages insured under this part.

CLAIM PROCEDURE

§ 204.300 Claim procedure in general.

(a) The provisions of §§ 203.301 through 204.381 of this chapter shall be applicable to mortgages foreclosed and property acquired during the period of coinsurance.

(b) The provisions of §§ 203.295 through 203.425 of this chapter shall be applicable to mortgages foreclosed or assigned and property conveyed to the Commissioner after termination of the period of coinsurance and while the mortgage is fully insured.

§ 204.301 Acquisition of property.

At any time within one year from the date of default, or such additional period of time as may be approved by the Commissioner, the mortgagee, at its election, shall either:

(a) Commence foreclosure of the mortgage; or

(b) Acquire possession of, and title to, the mortgaged property by means other than foreclosure.

§ 204.302 Notice of foreclosure.

The mortgagee shall give written notice to the Commissioner on a form prescribed by him within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

§ 204.303 Deed in lieu of foreclosure.

(a) In lieu of instituting or completing a foreclosure, the mortgagee may acquire property by voluntary conveyance from the mortgagor. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(1) The mortgage is in default at the time the deed is executed and delivered;

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage is satisfied of record as a part of the consideration for such conveyance; and

(4) The deed from the mortgagor contains a convenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title.

§ 204.304 Notice of acquisition of title.

The mortgagee shall give written notice to the Commissioner on a form prescribed by him within 15 days of acquisition of good marketable title to the property.

§ 204.305 Disposition of the property.

(a) The mortgagee shall take possession of, preserve and repair the property, and within six months after date of acquisition of marketable title, shall sell the property for the best price obtainable. Repairs shall not exceed those required by local law and, in cases where the sale is made with FHA-insured or VA-guaranteed financing, those necessary to meet the objectives of the FHA Minimum Property Standards; no other repairs shall be made without the specific advance approval of the Commissioner.

(b) The mortgagee shall not enter into a contract for the preservation, repair or sale of the property with any officer, employee, owner of ten per-

cent or more interest in the mortgagee or with any other person or organization having an identity of interest with the mortgagee or with any relative of such officer, employee, owner or person.

§ 204.306 Application for insurance benefits.

(a) Within 15 days after the sale of the property the mortgagee shall notify the Commissioner on a form prescribed by him of the sale of the property, the purchase price, income, and expenses incurred in connection with the acquisition, repair and sale of the property and shall assign to the Commissioner without recourse or warranty any and all claims (other than the mortgage financing such sale) which the mortgagee has acquired in connection with the mortgage transaction.

(b) If the property is not expected to be sold within six months after the date of acquisition of marketable title the mortgagee shall, at least 15 days prior to the expiration of the six-month period, notify the Commissioner who will promptly cause an appraisal of the property to be made by an independent appraiser. Within 15 days of receipt of the notice of the appraised value the mortgagee shall notify the Commissioner as provided in paragraph (a) of this section, utilizing the appraised value in lieu of the purchase price.

Payment of Insurance Benefits

§ 204.320 Method of payment.

If the application for insurance benefits is acceptable to the Commissioner, payment of the insurance claim shall be made in cash, in debentures or a combination of both, as determined by the Commissioner at the time of payment.

§ 204.321 Amount of payment.

(a) The basis for the computation of insurance benefits during the term of coinsurance shall be the sum of the original principal of the mortgage which was unpaid on the date of the institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, plus the amount of all payments made by the mortgagee and allowances for items as set forth in § 204.322, less all items as set forth in § 204.323.

(b) The amount of insurance benefits shall be 90 percent of the amount computed pursuant to paragraph (a) of this section.

(c) The originating mortgagee will be responsible for ten percent of the amount computed pursuant to paragraph (a) of this section.

(d) The aggregate amount for which a mortgagee will be responsible with respect to mortgages coinsured in any calendar year shall not exceed one percent of the total of the original principal amount of all mortgages coinsured by the mortgagee in such calendar year (excluding mortgages for which the coinsurance liability has been transferred), plus the total of the original principal amounts of all additional mortgages originated during such calendar year for which such mortgagee has assumed coinsurance liability. In the event an application for insurance benefits is accepted by the Commissioner which would cause the mortgagee's responsibility to exceed such limitation, the amount of insurance benefits shall be 100 percent of the amount computed pursuant to paragraph (a) of this section.

(e) The Commissioner will pay the originating mortgagee 100 percent of the amount computed pursuant to paragraph (a) of this section and will debit to the Annual Coinsurance Reserve any payment in excess of the amount of insurance benefits, provided the credit balance in the Annual Coinsurance Reserve is equal to, or more than, the amount of the mortgagee's responsibility under paragraph (c) of this section.

§ 204.322 Items included in payment.

The insurance benefits paid shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage, prorated to the date of disposition of the property;

(b) Special assessments, which are noted on the application for insurance or which become liens after the insur-

ance of the mortgage, prorated to the date of disposition of the property;

(c) Hazard insurance premiums on the mortgaged property not in excess of a "reasonable rate" as defined in § 203.379(c), prorated to the date of disposition of the property.

(d) MIP;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee;

(f) Foreclosure costs or costs of acquiring the property otherwise actually paid by the mortgagee and approved by the Commissioner, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. Where the foreclosure involves a mortgage executed in connection with the sale of property by the Secretary, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in title which existed at or prior to the time the mortgage was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner that such extra costs are over and above those customarily incurred in the area;

(g) Any uncollected mortgage interest allowed pursuant to forbearance relief granted under § 204.294;

(h) An amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of any MIP by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means under a mortgage to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply during any part or all of the period of the mortgagor's military service and three months thereafter;

(i) Charges for the administration, operation, maintenance or repair of community-owned property or the maintenance and repair of the mortgaged property paid by the mortgagee with respect to which it certifies to the Commissioner that payment was made for the purpose of discharging an obligation arising out of a covenant filed for record and approved by the Commissioner prior to the insurance of the mortgage;

(j) An amount equivalent to debenture interest at a rate established pursuant to § 204.350, on the principal of the mortgage unpaid on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, from the date of default to the date of acquisition of marketable title except that when the mortgagee fails to meet any one of the applicable requirements of §§ 204.301, 204.302, 204.304, 204.305, or § 204.306 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended: *Provided,* That debenture interest shall not be payable for any period for which the mortgagee receives uncollected mortgage interest allowed pursuant to forebearance relief granted under § 204.294;

(k) An amount equivalent to mortgage interest on the principal of the mortgage unpaid on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, from the date of acquisition of marketable title to the date on which the insurance benefits are paid: *Provided,* That when a mortgagee fails to submit its claim within the time specified by § 204.306, no interest shall be paid for the period beginning on the date the action should have been taken and ending on the date the mortgagee's claim is received by the Commissioner;

(l) Reasonable payments made by the mortgagee for:

(1) Preservation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the FHA Minimum Property Standards, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner;

(3) Expenses in connection with the sale of the property including a sales commission at the rate customarily

paid in the community and, if the sale to a buyer involves an FHA or VA mortgage, a discount at a rate not to exceed the maximum allowable by the Commissioner, as of the date of execution of the discounted loan, on sales of properties acquired by him pursuant to §§ 203.295 through 203.426 of this chapter;

(m) An amount to compensate the mortgagee for overhead costs, not to exceed $40 plus $15 per month for each month, or a part thereof, from the date of acquisition of title to the date of disposition or appraisal of the property pursuant to § 204.306(b), whichever first occurs.

[41 FR 6446, Feb. 12, 1976, as amended at 45 FR 56801, Aug. 26, 1980; 51 FR 28551, Aug. 8, 1985]

§ 204.323 Items deducted from payment.

There shall be deducted from the total of the added items in §§ 204.321(a) and 204.322 the following cash items:

(a) All amounts received by the mortgagee on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default;

(b) All amounts received by the mortgagee from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property;

(c) All cash retained by the mortgagee including amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal amount of the mortgage indebtedness;

(d) All amounts received by the mortgagee from any source relating to the sale of the property or the appraised value of the property as determined by an independent appraiser pursuant to § 204.306(b).

§ 204.330 Benefits to investing mortgagees.

Unless the originating mortgagee and the investing mortgagee otherwise agree, the originating mortgagee shall pay to the investing mortgagee, within 5 days of receipt of insurance benefits, the sum of the unpaid principal of the mortgage as provided in § 204.321(a), debenture and mortgage interest as provided in § 204.322 (j) and (k), and other advances for which reimbursement is due, less one-third of foreclosure costs.

§ 204.350 Debentures.

All of the provisions of §§ 203.405 through 203.409 and § 203.411 of this chapter shall apply to mortgages insured under this subpart, except that the debentures shall bear interest at the rate in effect on the effective date of the Mortgage Insurance Certificate.

§ 204.351 Issue date of debentures.

Debentures shall be issued as of the date on which payment of insurance benefits occurs.

§ 204.355 Mutual Mortgage Insurance Fund and distributive shares.

All of the provisions of §§ 203.420 through 203.425 of this chapter shall apply to mortgages insured under this subpart except with respect to the rights and obligations of originating mortgagees.

§ 204.360 Sale, assignment and pledge of insured mortgages.

All of the provisions of §§ 203.430 through 203.435 of this chapter shall apply to mortgages insured under this subpart.

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§ 204.380 Actions to be taken by mortgagee or lender.

With respect to any action required by the mortgagee or lender within a period of time prescribed by this subpart the Commissioner may extend such period.

Amendments

§ 204.381 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not

adversely affect the interest of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart C—Servicing Responsibilities

§ 204.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203(b) of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act, except that § 203.502(a) of this chapter does not apply during the period of coinsurance.

[53 FR 6921, Mar. 5, 1987, as amended at 52 FR 37938, Oct. 13, 1987]

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

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AUTHORITY: Sec. 1010, National Housing Act (12 U.S.C. 1749jj); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24531, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

DEFINITIONS

§ 205.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated.

(a) "Act" means the National Housing Act.

(b) "Secretary" means the Secretary of Housing and Urban Development or his authorized representatives.

(c) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(d) "Improvements" mean water lines and water supply installations, sewer lines and sewage disposal installations; steam, gas, and electric lines and installations; roads; streets; curbs; gutters; sidewalks; storm drainage facilities; and other installations or work, whether on or off the site of the mortgaged property, which the Commissioner deems necessary or desirable to prepare land primarily for residential and related uses or to provide facilities for public or common use. Related uses may include industrial uses, with sites for such uses to be in proper proportion to the size and scope of the developments. The public or common facilities shall include only such buildings as are needed in connection with water supply or sewage disposal installations; or steam, gas, or electric lines or installations; and such buildings, other than schools, as the Commissioner considers appropriate, which are to be owned and maintained jointly by the property owners.

(e) "Insured mortgage" means a mortgage insured by the endorsement of the credit instrument by the Commissioner.

(f) "Land development" means the process of making, installing, or constructing improvements.

(g) "Local public body" means a county, city, or other political subdivision within which a land development project or part of such project is established, and any other political subdivision, public agency, or instrumentality of one or more States, counties, or political subdivisions empowered under law to take or withhold any action required in connection with the establishment of such project.

(h) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with the payments provided for in the mortgage.

(i) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(j) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(k) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(l) "Project" means the land development and improvements which meet the land development criteria established by the Commissioner and which are to be paid for in part with proceeds of an insured mortgage or mortgages.

(m) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(National Housing Act, secs. 9, 201, 203, 207, 220, 221; 12 U.S.C. 1706d, 1707, 1709, 1713, 1715k, 1715l; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

[36 FR 24531, Dec. 22, 1971, as amended at 49 FR 12697, Mar. 30, 1984]

Applications, SAMA Letter and Commitments

§ 205.5 Applications.

(a) An application for the issuance of a Site Appraisal and Market Analysis (SAMA) letter must be submitted by the project sponsor. An application for a conditional or firm commitent for insurance of a mortgage shall be submitted by the project sponsor and an approved mortgagee. An applicant may initially elect to submit an application to the local HUD office for a SAMA letter, conditional commitment or firm commitment depending upon the completeness of the drawings, specifications and other required exhibits. An applicant also may elect to proceed directly to the firm commitment processing stage after issuance of a SAMA letter.

(b) All applications shall be submitted to the local HUD Field Office on HUD approved forms. No application shall be considered unless the information, documents and exhibits required in connection with the application form are submitted with it.

(Title X of the National Housing Act (12 U.S.C. 1749aa et seq.))

[44 FR 64404, Nov. 7, 1979]

§ 205.7 Effect and term of SAMA letter.

(a) *Effect of SAMA letter.* The issuance of a SAMA letter indicates that HUD has completed the site appraisal and market analysis stage of processing to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed land development and does not bind HUD to issue either a conditional or a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans, specifications and other data for the proposed land development and is limited to advising the applicant as to the following determinations of the Commissioner which shall not be changed to the detriment of an applican' if the application for a conditional or firm commitment is received before expiration of the SAMA letter:

(1) The "as-is" value of the land;

(2) The value of typical lots (in first stage, if a staged land development project) after development;

(3) The acceptability of the type of project proposed;

(4) The acceptability of any community improvements proposed or required (in the first stage, if a staged land development project);

(5) The completion of an environmental assessment and clearance (including Environmental Impact Statement, if necessary) pursuant to Departmental instructions and regulations; and

(6) The acceptability of the market for the proposed land development project and the estimated absorption period.

Where the application is not acceptable as submitted, but can be made acceptable by a change in the size or nature of the development, the SAMA letter may establish an acceptable alternative plan based on such changed land development project.

(b) *Term of SAMA letter.* A SAMA letter shall be effective for whatever term is specified in the letter.

(Title X of the National Housing Act (12 U.S.C. 1749aa et seq.))

[44 FR 64404, Nov. 7, 1979]

§ 205.9 Effect and terms of commitments.

(a) *Effect of conditional commitment.* The issuance of a conditional commitment indicates completion of technical processing involving:

(1) The acquisition cost of the land;

(2) The acreage, number of lots and community improvements;

(3) The estimated development cost of the project and the estimated construction period;

(4) The financial requirements and the mortgage amount;

(5) The financial and credit capacity of the sponsorship; and

(6) The Development Report for the proposed project, which is prepared by the Field Office; and which incorporates the construction schedule, the building program, land uses, and all required development improvements that are to be installed in the project.

(b) *Effect of firm commitment.* The issuance of a firm commitment indicates HUD's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured.

(c) *Rejection of an application.* A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or conditional commitment, shall be grounds for rejection of an application for conditional or firm commitment, respectively. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(d) *Types of firm commitment.* The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(e) *Terms of commitments.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(2) A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(3) A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and, if construction is begun as required, the commitment shall be effective for such additional period, estimated by HUD, as will allow for completion of construction.

(4) The term of either a conditional or a firm commitment may be extended in such a manner as the Commissioner may prescribe.

(f) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by HUD within 90 days of the expiration of the commitment. If the reopening request is not received by HUD within the required 90-day period, a new application, accompanied by the required application and commitment fees, must be submitted.

(Title X of the National Housing Act (12 U.S.C. 1749aa et seq.))

[44 FR 64404, Nov. 7, 1979]

Fees and Charges

§ 205.10 Application and commitment fees.

(a) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage amount to be insured shall accompany the application for a SAMA letter.

(b) *Application fee—conditional commitment.* An application fee of $1 per thousand dollars of the requested mortgage amount to be insured shall accompany the application for conditional commitment in cases in which the application fee for an unexpired SAMA letter has been collected. A fee of $2 per thousand dollars of the requested mortgage amount to be insured shall accompany the application for conditional commitment in cases in which the SAMA application fee has been paid but the SAMA letter has expired or in cases in which a SAMA application fee has not been paid.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application fee which, when added to prior fees received in connection with applications for the SAMA letter and the conditional commitment, will aggregate $4.50 per thousand dollars of the requested mortgage amount to be insured.

(d) *Reopening fee—conditional or firm commitment.* A reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the mortgage amount set forth in the expired commitment.

(Title X of the National Housing Act; 12 U.S.C.1749aa et seq.)

[44 FR 64404, Nov. 7, 1979]

§ 205.17 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $4.50 per

thousand dollars of the amount of the requested increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $4.50 per thousand dollars of the amount of the increase requested.

§ 205.18 Fees not required.

The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[41 FR 14861, Apr. 8, 1976]

§ 205.20 Transfer fee.

Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

§ 205.22 Refund of fees.

If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. The commitment and reopening fee may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

§ 205.25 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

Eligible Mortgagors

§ 205.30 Eligible mortgagors.

(a) *General requirements.* In order to be eligible as a mortgagor under this subpart, the applicant must be a mortgagor approved by the Commissioner, which is regulated or restricted by the Commissioner as to capital structure, use of property and methods of operation. A public body shall not be eligible for approval as a mortgagor. The regulation or restriction of the mortgagor shall continue until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage. The regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner may approve.

(b) *Special requirements—water or sewer systems.* The owner of a privately or cooperatively owned water or sewer system may be approved as a mortgagor. Such mortgagor shall be regulated by the Commissioner with respect to capital structure, methods of operation, rate of return, user rates and charges, and the terms and conditions of any sale or transfer. This regulation by the Commissioner shall continue for the entire period of pri-

vate or cooperative ownership or until the Commissioner is satisfied that adequate provision exists through governmental regulation or other means, to protect the system users as to the methods of operation, rates, charges, and disposition of such system.

(c) *Disclosure and verification of Social Security and Employer Identification Numbers.* To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0059)

[36 FR 24531, Dec. 22, 1971, as amended at 54 FR 39693, Sept. 27, 1989]

Eligible Mortgagees

§ 205.35 Qualification of lenders.

The provisions of §§ 203.1 through 203.4 and 203.6 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Eligible Mortgages

§ 205.40 Mortgage forms.

(a) *Approval of forms.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction where the project is located.

(b) *Changes in form.* No changes in the approved form shall be made without the prior written approval of the Commissioner.

§ 205.42 Eligibility of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 205.1(m). The mortgage shall be on real estate held:

(a) In fee simple; or

(b) Under a lease for not less than 99 years which is renewable; or

(c) Under a lease having a term which is determined by the Commissioner as sufficient to cover the period for development of the project plus the period necessary to meet the leasehold eligibility requirements for obtaining the FHA financing of the dwelling units to be constructed upon completion of the project.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 407, Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved Nov. 30, 1983))

[36 FR 24531, Dec. 22, 1971, as amended at 50 FR 4647, Feb. 1, 1985]

§ 205.45 Mortgage lien.

The mortgagor shall certify at the time application is made for the final insured advance of mortgage proceeds, with respect to that portion of the mortgaged property not released from the lien of the mortgage, that:

(a) The mortgage is the first lien upon that portion of the project upon which the improvements (exclusive of those involving facilities intended for public use that are in public ownership) have been made or constructed.

(b) The property upon which the improvements have been made or constructed is covered by a mortgage which is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner; and

(c) There will not be outstanding any other unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, or the improvements which have been made or constructed, except obligations approved by the Commissioner.

§ 205.47 Mortgage amortization and maximum maturity.

(a) The mortgage shall contain amortization or sinking fund provisions satisfactory to the Commissioner.

(b) The mortgage shall have a maturity not to exceed 10 years from the date of initial endorsement or such longer maturity as the Commissioner deems reasonable in each of the following instances:

(1) In the case of a privately owned system for water or sewage.

(2) In the case of a new community meeting the requirements of § 205.86.

(3) In a case where the Commissioner determines that unusual or unforseen circumstances make such longer

maturity necessary in order to avoid undue hardship to the mortgagor.

[36 FR 24531, Dec. 22, 1971, as amended at 50 FR 14921, Apr. 16, 1985]

§ 205.50 Agreed interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 404 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, approved Nov. 30, 1983)

[49 FR 19458, May 8, 1984]

§ 205.55 Maximum mortgage amount—loan-to-value limitation.

(a) A mortgage shall involve a principal obligation not in excess of the lesser of the following:

(1) 90 percent of the Commissioner's estimate of the development cost plus 80 percent of the Commissioner's estimate of the value of the land before development;

(2) The total of:

(i) The Commissioner's estimate of the development cost, plus

(ii) The greater of acquisition cost or all outstanding indebtedness secured by the land, plus

(iii) 50 percent of the difference between the applicable amount in paragraph (a)(2)(ii) of this section and the Commissioner's estimate of the value of the land before development; or

(3) 85 percent of the Commissioner's estimated value of the property after the completion of the development.

(b) Indebtedness incurred within two years of the date of the SAMA application may not be treated as indebtedness for the purpose of this section except as approved by the Commissioner.

(c) If a staged development is involved, for the purpose of determining the amount under paragraph (a)(2)(iii) of this section, only the portion of the amount arrived at under paragraph (a)(2)(ii) of this section and the portion of the Commissioner's estimate of the value of the land before development which are applicable to the stage being developed are to be utilized.

(Title X of the National Housing Act; 12 U.S.C. 1749aa et seq.)

[44 FR 64405, Nov. 7, 1979]

§ 205.57 Reduced mortgage amount—leaseholds.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

[41 FR 11286, Mar. 18, 1976]

§ 205.60 Application of payments.

The mortgage shall contain a provision satisfactory to the Commissioner, setting forth the manner in which the mortgagee shall apply payments. No prepayment penalty will be permitted.

§ 205.62 Standard for acceptability.

In order for a mortgage to be acceptable for insurance, the property or project shall represent a good mortgage insurance risk.

§ 205.65 Zoning, deed or building restrictions.

The project when completed shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations and requirements.

§ 205.67 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to all of the following conditions:

(a) The Trustee shall be an approved mortgagee authorized to act in a fiduciary capacity.

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of the bonds or other obligations in all matters con-

cerning the mortgage insurance contract.

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance. The trust indenture shall expressly authorize the Commissioner to make payment of any insurance claim to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits.

(d) The bonds or other obligations shall be issued only to holders meeting one of the following qualifications:

(1) A mortgagee approved by the Commissioner.

(2) A pension or retirement fund or a profit-sharing plan, having lawful authority to acquire the bonds or other obligations, which fund is maintained and administered by a corporation or by a governmental agency or by a trustee or trustees.

(3) A charitable or nonprofit organization.

§ 205.68 Eligibility of refinancing transactions.

A mortgage given to refinance an existing mortgage may be insured under this subpart. The principal amount and the term of the new mortgage may not exceed the unpaid amount and the unexpired term of the existing insured mortgage. The mortgage may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

[53 FR 8882, Mar. 18, 1988]

§ 205.69 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the loan exceed a minimum amount established by the mortgagee.

[53 FR 8882, Mar. 18, 1988]

Commitment to Insure

§ 205.70 Issuance of commitment.

Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

§ 205.72 Types of commitment.

The commitment may provide for the insurance of advances during construction or for insurance upon completion.

§ 205.73 Term of commitment.

If the commitment fee is paid as required, a commitment shall have a term which is determined as follows:

(a) A commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(b) A commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(c) The term of a commitment may be extended in such manner as the Commissioner may, from time to time, prescribe.

(d) If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of a commitment, the commitment shall expire on the 30th day.

§ 205.75 Reopening of expired commitment.

An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment which has expired because of failure to pay the commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, shall be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment in-

crease rather than on the amount of the original commitment.

§ 205.77 Extension of commitment.

Where the mortgagee has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

INSURANCE OF ADVANCES

§ 205.80 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 205.82 Assurance of completion.

(a) Assurance of completion satisfactory to the Commissioner shall be furnished in one of the following forms:

(1) Performance and payment bonds issued by a surety company satisfactory to the Commissioner on forms approved by the Commissioner. Each bond shall be in the amount of 100 percent of the cost of improvements as estimated by the Commissioner.

(2) An escrow deposit with the mortgagee (or with a depository satisfactory to the mortgagee and the Commissioner) of cash or securities of, or fully guaranteed as to principal and interest by, the United States of America in such amount and under a completion assurance agreement acceptable to the Commissioner except that FHA debentures may not be used for such deposit.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a)(2) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

(Title X of the National Housing Act; 12 U.S.C. 1749aa et seq.)

[36 FR 24531, Dec. 22, 1971, as amended at 48 FR 44070, Sept. 27, 1983]

SPECIAL REQUIREMENTS

§ 205.85 Land development criteria.

(a) The land shall be developed in accordance with a plan that:

(1) Is acceptable to the Commissioner as providing reasonable assurance that the land development will contribute to good living conditions in the area being developed;

(2) Is consistent with a comprehensive plan which covers, or with comprehensive planning being carried on for, the area in which the land is situated and which meets criteria set forth by the Commissioner.

(b) The Commissioner shall receive assurances satisfactory to him that the area being developed will:

(1) Have a sound economic base and a long economic life;

(2) Be characterized by sound land use patterns; and

(3) Include or be served by such shopping, school, recreational, transportation, and other facilities as the Commissioner deems adequate or necessary.

(c) The land development shall be undertaken and carried out pursuant to a schedule that will assure the use of such land for the purpose for which it is developed within the shortest reasonable period of time consistent with the objectives of sound and economic community growth or urban development The schedule shall provide specific information as to the proposed period of time in which the sale or other use of the developed land shall take place, and in which construction of residential or other buildings shall commence on the developed land.

(d) If there is no comprehensive plan which covers, or no such comprehensive plan being carried on for, the area in which the land is situated, the requirement of paragraph (a)(2) of this section is not applicable to any project covered by an insurance commitment

issued on or after December 31, 1970 and before January 1, 1972.

§ 205.86 New community criteria.

A mortgage satisfying all of the other requirements of this subpart may be approved by the Commissioner for insurance as covering a project involving the development of a new community, if the following requirements are met:

(a) The construction of the new community has been approved by the local governing body of the locality where it is to be located and approved by the Governor of the State, except that the Governor's approval shall not be required if the Commissioner determines the locality has been delegated general powers of local self-government by the State.

(b) It is determined by the Secretary that the new community, in view of its size and scope, will make a substantial contribution to the sound economic growth of the area within which it is to be located in the form of:

(1) Substantial economies in the development of improved residential sites through the use of large-scale methods.

(2) Adequate housing for those who would be employed in the community or the surrounding area.

(3) Maximum accessibility from the new residential sites to industrial or other employment centers and to commercial, recreational, and cultural facilities in or near the community.

(4) Maximum accessibility to any major central city in the area.

§ 205.87 Equity requirements.

(a) *Funds and finances—insured advances.* If the commitment provides for insurance of advances during construction, the following requirements shall be met:

(1) The mortgagor shall deposit with the mortgagee, prior to initial endorsement, an amount deemed by the Commissioner to be sufficient (when added to the proceeds of the insured mortgage) to defray during the course of construction, payments for accrued taxes, hazard insurance premiums, and assessments required by the terms of the mortgage.

(2) Before initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to the project. The cash shall be held by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such cash to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any mortgage money. If all or part of the funds required under this paragraph are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds, to pay the cost of such work, material or other charges and expenses. However, if any portion of these funds is to be provided by the mortgagor, that portion must be disbursed in full before the disbursement of the mortgage proceeds.

(3) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the intial service charge and which have been approved by the Commissioner shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(b) *Deposit and use of funds.* Unless other arrangements acceptable to the Commissioner are made, the funds referred to in paragraph (a) of this section shall be deposited with and held by the mortgagee in a special account or by an acceptable depository, designated by the mortgagee, under an appropriate agreement approved by the Commissioner.

(c) *Letter of credit or agreement.* The mortgagee may accept, in lieu of a cash deposit required by paragraphs (a)(1) and (3) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. If all or part of the funds

required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept for the portion so provided, in lieu of the cash deposit required by paragraph (a) 2) of this section, either an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution or an agreement, as described in § 207.19(c)(7), which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee. The mortgagee of record may not be the issuer of any letter of credit referred to in this paragraph without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance under the letter of credit.

[36 FR 24531, Dec. 22, 1971, as amended at 48 FR 35390, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

PREVAILING WAGE REQUIREMENTS

§ 205.90 Escrow for offsite utilities and streets.

(a) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 205.92 Water and sewerage facilities.

(a) *Requirements in general.* The project, after development, shall be served by public systems for water supply and sewage disposal consistent with other existing or prospective systems in the area, except that private systems may be used if they meet the requirements of paragraphs (b) and (c) of this section. In all projects, the system for sewage disposal, including storm sewers and storm drainage facilities, shall not be approved by the Commissioner unless he finds that such system will not contribute to the pollution of local waterways.

(b) *Private water systems.* The Commissioner may approve the use of a privately or cooperatively owned water system if he makes each of the following determinations with respect to the system:

(1) It will be consistent with other existing or prospective systems within the area.

(2) It will be adequate to serve the needs of the area being developed.

(3) It will be regulated, during the period of ownership, by the State or a political subdivision or an agency thereof, or in the absence of such State or local regulation, it will otherwise be regulated in a manner acceptable to the Commissioner. The regulation shall cover user rates and charges, capital structure, methods of operation rate of return, and conditions and terms of any sale or transfer.

(c) *Private sewerage systems*—(1) *Existing systems.* The Commissioner may approve the use of an existing privately or cooperatively owned sewerage system if he determines that the system will be adequate to serve the needs of the area being developed and that its operation will be regulated by the State or a political subdivision or

an agency thereof, or in the absence of such State or local regulation, it will otherwise be regulated in a manner acceptable to the Commissioner. The regulation shall cover user rates and charges, capital structure, methods of operation, rate of return, and conditions and terms of any sale or transfer.

(2) *New systems.* The Commissioner may approve the use of a newly developed privately or cooperatively owned sewerage system if he makes each of the following determinations with respect to the system:

(i) Public ownership of the system is not feasible.

(ii) It will be adequate to serve the needs of the area being developed.

(iii) It will be consistent with other existing or prospective systems within the area.

(iv) It will be regulated during the period of ownership by the State or a political subdivision or any agency thereof, or in the absence of such State or local regulation, it will otherwise be regulated in a manner acceptable to the Commissioner. The regulation shall cover user rates and charges, capital structure, methods of operation, and rate of return.

(v) Adequate plans exist for the sale or transfer of the system to a local public authority under terms and conditions which are satisfactory to the Commissioner and which provide reasonable assurance the sale or transfer will eventually be made.

§ 205.95 Labor standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the Regulations of the Secretary of Labor, published in Title 29, Code of Federal Regulations, as Part 5 of Subtitle A thereof, and as amended from time to time.

§ 205.97 Ineligible contractors.

No land development contract shall be entered into with a general contractor or subcontractor if such contractor or subcontractor (or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest) is on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

[49 FR 45126, Nov. 15, 1984]

§ 205.100 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest) was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

[49 FR 45126, Nov. 15, 1984]

§ 205.102 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner. The certificate shall state that the laborers and mechanics employed in the construction of the project have been paid not less than the wages prevailing in the locality for the corresponding classes of laborers and mechanics employed on construction of similar character. The prevailing wage determination shall be made by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 205.105 Discrimination prohibited.

Any contract or subcontract executed for the development of land shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

COST CERTIFICATION REQUIREMENTS

§ 205.110 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over the amounts specified in § 205.132. Under this agreement, the mortgagor shall agree to:

(1) Disclose its relationship with the general contractor, including any collateral agreement, and with subcontractors and suppliers;

(2) Enter into a development contract the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the contractor;

(3) Execute a certificate prior to each insured advance showing actual amounts disbursed prior to the initial endorsement of the mortgage for insurance or since the last insured advance; and

(4) Apply any excess of mortgage proceeds over the amounts specified in § 205.132 to reduction of the outstanding balance of the principal of the mortgage, as and when directed by the Commissioner.

(b) The provisions of paragraphs (a) (1) and (2) of this section shall not apply where the mortgagor is the general contractor.

§ 205.112 Form of contract.

The form of contract between the mortgagor and the general contractor shall be in accordance with the following:

(a) *Lump sum contract.* If the Commissioner determines that neither the mortgagor nor any of the officers, directors, stockholders, partners or beneficiaries of the mortgagor have any interest in the general contractor, there may be used a lump sum form of contract providing for payment of a specified amount.

(b) *Fixed fee contract.* If the Commissioner determines that the mortgagor, its officers, directors, stockholders, partners or beneficiaries have any interest, financial or otherwise, in the general contractor, the form of contract shall provide for payment of the actual cost of land development not to exceed an upset price and may provide for payment of a fixed fee to the general contractor which shall not exceed a reasonable allowance as established by the Commissioner, in accordance with customary practices in the area.

§ 205.115 Certificate as to subcontracts.

If the Commissioner determines that the mortgagor, its officers, directors, stockholders, partners or beneficiaries have any interest, financial or otherwise in any subcontractor or material supplier, the mortgagor shall certify (at such times and in such form as may be prescribed by the Commissioner prior to final endorsement of the mortgage for insurance) that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 205.117 Certificate of actual cost—contents in general.

(a) *Submission of certificates.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner shall be submitted prior to each insured advance.

(b) *Items to be included.* Each certificate shall show the actual cost to the mortgagor of items as follows:

(1) Development contract, where the mortgagor and the general contractor are separate entities.

(2) Construction of the improvements where the mortgagor is the general contractor and there is no development contract.

(3) Architect's fee, engineer's fee, and land planning fees.

(4) Offsite public utilities and streets not included in computations under paragraphs (b) (1) and (2) of this section.

(5) Organization and legal work.

(6) Other items of expense approved by the Commissioner.

(c) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, partners,

or beneficiaries Any such payments shall be deducted from the costs determined under paragraph (b) of this section.

§ 205.120 Certificate of actual cost—fixed fee or no contract.

In the case of a cost plus fixed fee contract or where the mortgagor is the general contractor and there is no development contract, the certificate of actual cost, in addition to the requirements of § 205.117, shall show the following allowances:

(a) Such general overhead items as are acceptable to the Commissioner.

(b) A reasonable allowance for the general contractor's profit as established by the Commissioner.

§ 205.122 Certificate of actual cost—subcontractor's cost.

(a) *Submission of certificates.* The Commissioner may require the mortgagor to submit a certificate of actual cost showing all amounts actually paid by a subcontractor, material supplier or equipment lessor, where it is determined by the Commissioner that an identity of interest exists between either of the following:

(1) The mortgagor or any of its officers, directors, stockholders, partners or beneficiaries and any subcontractor, material supplier, or equipment lessor.

(2) The general contractor and any subcontractor, material supplier, or equipment lessor.

(b) *Items to be included.* Each certificate shall show the amounts paid for labor, materials, subcontracts and overhead.

(c) *Items not to be included.* The certificate shall not include amounts paid for any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, partners, or beneficiaries.

§ 205.125 Contractor's certification—fixed fee contract.

A general contractor receiving a fixed fee shall certify, in form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract. The fee of the general contractor, any kickbacks, rebates, trade discounts, or other similar payments to the general contractor or mortgagor corporation or any of its officers, directors, stockholders, partners or beneficiaries shall not be included in arriving at such actual costs.

§ 205.127 Records.

The mortgagor shall keep and maintain adequate records of all costs of any development or other cost items not representing work under the general contract and shall require the general contractor to keep similar records. Upon request by the Commissioner, such records, together with any collateral agreements, shall be made available for examination.

§ 205.130 Certificate of public accountant.

The certificates of actual cost shall be supported by certificates, when required by the Commissioner, as to accuracy by an independent Certified Public Accountant or independent public accountant, and shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 205.132 Reduction in mortgage amount.

The principal obligation of the mortgage shall be reduced at final endorsement for insurance or at such earlier times as may be required by the Commissioner, to an amount not exceeding (with respect to that portion of the land remaining under the mortgage) 80 percent of the Commissioner's estimated value of such portion of the land prior to development plus 90 percent of the actual cost of the land development allocated by the Commissioner to such portion.

[40 FR 3, Jan. 2, 1975]

§ 205.135 Effect of agreement.

Any agreement, undertaking, statement, or certification required in connection with cost certification shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner and may

be relied upon as a true statement of the facts contained therein.

§ 205.137 Cost certification incontestable.

Upon the Commissioner's approval of the certification by the mortgagor as to actual costs submitted in connection with the request for the final insured advance of mortgage proceeds, such certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor. This provision shall not apply to any other certification by the mortgagor as to actual costs.

§ 205.138 Waiver of eligibility requirements for mortgage insurance.

The Secretary may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under any section or title of the Act.

[39 FR 2757, Jan. 24, 1974]

TITLE

§ 205.140 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 205.142 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) Torrens or similar title certificate.

§ 205.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations

§ 205.251 Cross-reference.

(a) All of the provisions of §§ 207.251 et seq. (Part 207, Subpart B) of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply to mortgages on a land development insured under title X of the National Housing Act, except the following provisions:

Sec.
207.251 Definitions.
207.252 First, second, and third premiums.

Sec.
207.253 Termination by prepayment and voluntary termination.

(b) For the purposes of this subpart, all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to title X of the Act.

(c) All of the definitions in § 205.1 shall apply to this subpart. In addition, as used in this part, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

[36 FR 24531, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

§ 205.253 Mortgage insurance premium.

Mortgage insurance premiums shall be payable in advance by the mortgagee to the Commissioner in accordance with the following provisions:

(a) In all cases except where the mortgage cover a water and/or sewer system, the mortgage insurance premium shall be paid as follows:

(1) Upon initial endorsement of the mortgage for insurance, there shall be paid an amount equal to 2 percent of the face amount of the mortgage. Such payment shall cover the first 3 years of the mortgage insurance or the entire term of the mortgage insurance when such term does not exceed 3 years.

(2) If the mortgage term exceeds 3 years there shall be paid on the third anniversary of the initial endorsement of the mortgage for insurance, and on each succeeding anniversary date of such endorsement, an amount equal to 1 percent of the outstanding principal balance of the mortgage at the end of the previous mortgage insurance year, which shall be adjusted to give effect to reductions in the principal balance of the mortgage resulting from sale of portions of the property covered by the mortgage, but without taking into consideration delinquent payments or prepayments.

(3) If the mortgage term exceeds 3 years and contains amortization provisions, the mortgage insurance premium shall be adjusted so that subsequent mortgage insurance premiums shall be paid on the anniversary dates of the commencement of amortization rather than on the anniversary dates of the initial endorsement of the mortgage for insurance.

(b) If the mortgage covers a water and/or sewer system, the mortgage insurance premium shall be paid as follows:

(1) Upon initial endorsement of the mortgage for insurance, there shall be paid an amount equal to one-twelfth of 1 percent of the original face amount of the mortgage for each month or fraction thereof prior to the date of commencement of amortization.

(2) Upon commencement of amortization and on each anniversary date thereafter until the mortgage is paid in full (or until receipt by the Commissioner of an application for insurance benefits, or until the contract of mortgage insurance is otherwise terminated with the consent of the Commissioner), there shall be paid an amount equal to three-fourths of 1 percent of the average outstanding principal balance of the mortgage for the year following the date on which such premium becomes payable, without taking into consideration delinquent payments or prepayments.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

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AUTHORITY: Secs. 211 and 255 of the National Housing Act (12 U.S.C. 1715b, 1715z-20); sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 54 FR 24833, June 9, 1989, unless otherwise noted.

Subpart A—General

§ 206.1 Purpose.

Section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) added a new section 255 to the National Housing Act (12 U.S.C. 1715z-20). Section 255 authorizes a program for the insurance of home equity conversion mortgages (also known as reverse mortgages) for elderly homeowners. This program of mortgage insurance is designed:

(a) To meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets;

(b) To encourage and increase involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners; and

(c) To evaluate data to determine the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages, the types of home equity conversion mortgages that best serve the interests of elderly homeowner mortgagors, mortgagees and the Federal Government, and the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for the elderly.

§ 206.3 Definitions.

As used in this part, the following terms shall have the meaning indicated.

"Assessment" means a special assessment by a public body or an assessment by a condominium or homeowner association.

"Contract of insurance" means the agreement evidenced by the issuance of a mortgage insurance certificate, incorporating by reference Subpart C and the applicable provisions of the National Housing Act.

"Day" means calendar day, except where the term "business day" is used.

"Expected average mortgage interest rate" means the mortgage interest rate used to calculate monthly payments to the mortgagor and established when the mortgage interest rate is established. For fixed rate mortgages, it is the fixed mortgage interest rate. For adjustable rate mortgages, it is the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury Securities adjusted to a constant maturity of 10 years. The mortgagee's margin is defined as the initial mortgage interest rate minus the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. The mortgagee's margin is the same margin used to determine periodic adjustments to the interest rate.

"Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a mortgage insurance certificate.

"Maximum claim amount" means the lesser of the appraised value of the property or maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum dollar amount for the area shall be as of the date the conditional commitment is issued. Closing costs shall not be taken into account in determining appraised value.

"MIP" means the mortgage insurance premium paid by the mortgagee to the Secretary in consideration of the contract of insurance.

"Mortgage" means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a condominium, the term "mortgage" means a first lien covering a fee interest or eligible leasehold interest in a one-family unit in a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated. The term refers to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed," or another term used in a particular jurisdiction. The term "mortgage" also includes the credit instrument, or note, secured by the lien, and the loan agreement between the mortgagor, the mortgagee and the Secretary.

"Mortgagee" means the original lender under an insured mortgage, any assign permitted by § 206.101 and the Secretary if the mortgage is assigned to the Secretary.

"Mortgagor" means each original borrower under a mortgage. The term does not include successors or assigns of a borrower.

"Principal limit" means the maximum disbursement that could be received in any month under a mortgage, assuming that no other disbursements are received, taking into account the age of the youngest mortgagor, the expected average mortgage interest rate, and the maximum claim amount. Mortgagors over the age of 95 will be treated as though they are 95 for purposes of calculating the principal limit. The principal limit is calculated for the first month that a mortgage could be outstanding using factors provided by the Secretary. It increases each month thereafter by one-twelfth of the expected average mortgage interest rate, plus the monthly MIP. It is used to calculate payments to a mortgagor.

"Principal residence" means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time.

"Secretary" means the Secretary of Housing and Urban Development or his or her authorized representatives.

[54 FR 24833, June 9, 1989; 54 FR 32000, Aug. 4, 1989]

§ 206.5 Waivers.

The Secretary, in an individual case, may waive any requirement of Subpart B not required by statue if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of this program. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be delegated further.

§ 206.7 Effect of amendments.

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to Subparts B and C shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured, and shall not adversely affect the interests of a mortgagee on any mortgage to be insured on which the Secretary has made a commitment to insure. Such amendments shall not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where the Secretary makes payments to the mortgagor.

Subpart B—Eligibility; Applications

§ 206.9 Eligible mortgagees.

(a) *Statutory requirements.* A mortgagee must be authorized to make reverse mortgages under a Federal law other than section 255 of the National Housing Act, including section 804 of the Garn-St Germain Depository Institutions Act of 1982, or the law of the State where the property to be mortgaged is located.

(b) *HUD approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under Part 203 of this chapter, except an investing mortgagee approved under § 203.6 of this chapter, is eligible to apply for reservations of insurance authority in accordance with § 206.11 of this chapter. A mortgagee approved under §§ 203.3, 203.4, 203.6 or 203.7 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

§ 206.11 Application for reservations of insurance authority.

(a) *Definition.* A reservation of insurance authority is an assurance by the Secretary that the Secretary will be able to insure a mortgage which meets the requirements of this subpart.

(b) *Application.* An eligible mortgagee may apply for reservations of insurance authority in accordance with instructions issued by the Secretary. An eligible mortgagee may apply for additional reservations after its initial reservations are used or expire if reservations of insurance authority are available.

(c) *Approval.* If the application for the reservations is acceptable, the Secretary will then approve the request for reservations if reservations of insurance authority are available. A mortgagee may not originate a mortgage under this part without first obtaining a reservation of insurance authority for the mortgage.

(d) *Expiration and extension.* A reservation of insurance authority will expire six months after the date of issue. Reservations will be extended if a conditional commitment is secured from the Secretary before the reservation expires. Reservations of insurance authority will be extended until the firm commitment for that application expires.

(e) *Requirements for approval—loan correspondents.* At the time of application for reservations of insurance authority, a loan correspondent (as defined in § 203.5 of this chapter) shall provide evidence satisfactory to the Secretary that the mortgages to be insured under this part will be purchased by the loan correspondent's sponsor or sponsors. Such evidence shall include:

(1) The name of each sponsor mortgagee which will purchase the mortgages originated under this part, and (2) a copy of each purchase agreement which obligates the sponsor mortgagee to purchase the mortgages originated

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under this part. The collective agreements must show that all the mortgages originated by the loan correspondent will be purchased if all insurance authority reserved by the loan correspondent under paragraph (c) of this section is used.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.13 Ineligible programs.

Mortgages originated through the Direct Endorsement or Coinsurance programs are not eligible for insurance under this part.

§ 206.15 Application for insurance.

(a) *Submission.* A mortgagee with a reservation of insurance authority may submit an application for insurance of a mortgage which is about to be executed.

(b) *Form.* The application must be made upon a form prescribed by the Secretary.

(c) *Insurance of mortgage.* The Secretary approves an application for mortgage insurance by issuing a conditional commitment and a firm commitment. The Secretary shall establish in the commitment documents the terms and conditions upon which the mortgage will be insured. The mortgagee, upon closing the mortgage, submits to the Secretary the commitment documents, the certificate received by the mortgagor from the counseling entity that the mortgagor has received counseling as required under § 206.41, a title insurance policy, the mortgagee's election of either the assignment or shared premium option under § 206.107, a copy of the mortgage to be insured, the original second mortgage required by § 206.27(d), and any other documentation required by the Secretary. If the mortgagee has complied with the terms and conditions of the commitment documents and this paragraph (c), the Secretary will issue a Mortgage Insurance Certificate. Mortgages insured under this part shall be obligations of the General Insurance Fund.

(Approved by the Office of Management and Budget under control number 2528-0133)

[54 FR 24833, June 9, 1988; 54 FR 32[illegible] Aug. 4, 1989]

Eligible Mortgages

§ 206.17 General.

(a) *Payment options.* A mortga[illegible] shall initially provide for the tenu[illegible] payment option (§ 206.19(a)), the ten[illegible] payment option (§ 206.19(b)), or th[illegible] line of credit payment optio[illegible] (§ 206.19(c)), subject to later change[illegible] accordance with § 206.26.

(b) *Interest rate.* A mortgage sha[illegible] provide for either fixed or adjustab[illegible] interest rates in accordance wit[illegible] § 206.21.

(c) *Shared appreciation.* A mortga[illegible] may provide for shared appreciation [illegible] accordance with § 206.23.

§ 206.19 Payment options.

(a) *Term payment option.* Under th[illegible] term payment option, equal monthl[illegible] payments are made by the mortgage[illegible] to the mortgagor for a fixed term o[illegible] months chosen by the mortgagor[illegible] unless the mortgage is prepaid in ful[illegible] or becomes due and payable earlie[illegible] under § 206.27(c).

(b) *Tenure payment option.* Unde[illegible] the tenure payment option, equa[illegible] monthly payments are made by th[illegible] mortgagee to the mortgagor as long a[illegible] the property is the principal residenc[illegible] of the mortgagor, unless the mortgage[illegible] is prepaid in full or becomes due and[illegible] payable under § 206.27(c).

(c) *Line of credit payment option.* Under the line of credit option, payments are made by the mortgagee to the mortgagor at times and in amounts determined by the mortgagor, if the mortgage balance after the payment will be less than or equal to the principal limit for the month in which the payment is drawn, excluding any portion of the principal limit set aside for repairs or servicing charges.

(d) *Principal limit set aside.* (1) Under the term or tenure options, the mortgagee shall, if requested by the mortgagor, set aside a portion of the principal limit to be drawn down as a line of credit.

(2) When repairs required by § 206.47 will be completed after closing, the mortgagee shall set aside a

portion of the principal limit equal to 150% of the Secretary's estimated cost of repairs, plus the repair administration fee.

(3) When required by § 206.205(f), the mortgagee shall set aside a portion of the principal limit for payment of property charges consisting of taxes, ground rents, flood and hazard insurance premiums and assessments.

(4) When servicing charges will be made as permitted by § 206.207(b), the mortgagee shall set aside a portion of the principal limit sufficient to cover charges through a period equal to the payment term which would be used to calculate tenure payments under § 206.25(c).

(e) *Interest accrual and repayment.* The interest charged on the mortgage balance shall be added to the mortgage balance monthly as provided in the mortgage. Under all payment options, repayment of the mortgage balance including monthly MIP and interest is deferred until the mortgage becomes due and payable in full under § 206.27(c).

§ 206.21 Interest rate.

(a) *Fixed interest rate.* A fixed interest rate is agreed upon by the mortgagor and mortgagee.

(b) *Adjustable interest rate.* An initial interest rate is agreed upon by the mortgagor and mortgagee. The interest rate shall be adjusted in one of two ways depending on the option selected by the mortgagor. Whenever an interest rate is adjusted, the new interest rate applies to the entire mortgage balance. The difference between the initial interest rate and the index figure applicable when the firm commitment is issued shall equal the margin used to determine interest rate adjustments.

(1) A mortgagee offering an adjustable interest rate shall offer a mortgage that limits the frequency and magnitude of rate increases and decreases as provided in § 203.49(a), (c) and (e) of this chapter, except that reference to "mortgagor's first debt service payment" in § 203.49(c) shall mean "closing," and references in § 203.49(e)(1) to "one percentage point" shall mean "two percentage points."

(2) If a mortgage meeting the requirements of paragraph (b)(1) of this requirements of paragraph (b)(1) of this section is offered, the mortgagee may also offer a mortgage which provides for monthly adjustments to the interest rate, corresponding to an index as provided in § 203.49(a) and (e)(2), and which sets a maximum interest rate that can be charged without limiting monthly or annual increases or decreases. The first adjustment must occur on the first day of the second full month after closing.

(c) *Pre-loan Disclosure.* (1) At the time the mortgagee provides the mortgagor with a loan application, a mortgagee also shall provide a mortgagor with a written explanation of any adjustable interest rate features of a mortgage. The explanation must include the following items:

(i) The circumstances under which the rate may increase;

(ii) Any limitations on the increase; and

(iii) The effect of an increase.

(2) Compliance with 12 CFR part 226, as amended at 54 FR 24670 (June 9, 1989) pursuant to the Home Equity Loan Consumer Protection Act of 1988, shall constitute full compliance with paragraph (c)(1) of this section.

(d) *Post-loan disclosure.* At least 25 days before any adjustment to the mortgage balance may occur, the mortgagee must advise the mortgagor of the following:

(1) The current index amount; and

(2) The new mortgage balance.

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[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989; 54 FR 36765, Sept. 5, 1989]

§ 206.23 Shared appreciation.

(a) *Additional interest based on net appreciated value.* Any mortgage for which the mortgagee has chosen the shared premium option (§ 206.107) may provide for shared appreciation. At the time the mortgage becomes due and payable or is paid in full, whichever occurs first, the mortgagor shall pay an additional amount of interest equal to a percentage of any net appreciated value of the property during

the life of the mortgage. The percentage of net appreciated value to be paid to the mortgagee, referred to as the appreciation margin, shall be no more than twenty-five percent, subject to an effective interest rate cap of no more than twenty percent.

(b) *Computation of mortgagee share.* The mortgagee's share of net appreciated value is computed as follows:

(1) If the mortgage balance at the time the mortgagee's share of net appreciated value becomes payable is less than the appraised value of the property at the time of loan origination, the mortgagee's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds (i.e., sales proceeds less transfer costs and capital improvement costs incurred by the mortgagor, but excluding any liens) and multiplying by the appreciation margin.

(2) If the mortgage balance is greater than the appraised value at the time of loan origination but less than the adjusted proceeds, the mortgagee's share is calculated by subtracting the mortgage balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(3) If the mortgage balance is greater than the adjusted sales proceeds, the net appreciated value is zero.

(4) If there has been no sale or transfer involving satisfaction of the mortgage at the time the mortgagee's share of net appreciated value becomes payable, "sales proceeds" for purposes of this section shall be the appraised value as determined in accordance with procedures approved by the Secretary.

(c) *Effective interest rate.* To determine the effective interest rate, the amount of interest which accrued in the twelve months prior to the sale of the property or the prepayment is added to the mortgagee's share of the net appreciated value. The sum of the mortgagee's share of the net appreciated value and the interest, when divided by the sum of the mortgage balance at the beginning of the twelve month period prior to sale or prepayment plus the payments to or on behalf of the mortgagor (but not including interest) in the twelve months prior to the sale or prepayment, shall not exceed an effective interest rate of twenty percent.

(d) *Disclosure.* At the time the mortgagee provides the mortgagor with a loan application for a mortgage with shared appreciation, the mortgagee shall disclose to the mortgagor the principal limit, payments and interest rate which are applicable to a comparable mortgagee offered by the mortgagee without shared appreciation.

(Approved by the Office of Management and Budget under control number 2528-0133)

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989; 54 FR 36765, Sept. 5, 1989]

§ 206.25 Calculation of payments.

(a) *Initial payment.* At closing an initial payment shall be made by the mortgagee in an amount equal to the sum of initial MIP under § 206.105(a) if not paid in cash by the mortgagor, fees and charges allowed under § 206.31(a) if not paid in cash by the mortgagor, and any additional payment requested by the mortgagor. The total initial payment, plus any amount set aside for repairs after closing under § 206.47, for property charges under § 206.205(f), or for servicing charges under § 206.207(b), shall not exceed the principal limit.

(b) *Monthly payments—term option.* (1) Using factors provided by the Secretary, the mortgagee shall calculate the monthly payment so that the sum of (i) or (ii) added to (iii), (iv), (v) and (vi) shall be equal to the principal limit at the end of the payment term:

(i) An initial payment under paragraph (a) of this section plus any portion of the principal limit set aside for repairs, property charges or servicing charges under § 206.19(d), or

(ii) The mortgage balance at the time of a change in payment option in accordance with § 206.26 plus any portion of the principal limit set aside for repairs, property charges or servicing charges under § 206.19(d) which remains unused; and

(iii) Any amount of the principal limit set aside as a line of credit; and

(iv) All monthly payments (including any amounts to be withheld for

property charges) due through the payment term; and

(v) All MIP due through the payment term; and

(vi) All interest through the payment term. The expected average mortgage interest rate shall be used for this purpose.

(2) If the mortgage has an adjustable interest rate, the mortgagee shall make all monthly payments through the payment term even if the mortgage balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected average mortgage interest rate.

(c) *Monthly payments—tenure option.* Monthly payments under the tenure payment option shall be calculated as if the number of months in the payment term equals 100 minus the age of the youngest mortgagor multiplied by 12, but payments shall continue until the mortgage becomes due and payable under § 206.27(c).

(d) *Combining options.* If the mortgagor combines a line of credit set aside with the term or tenure payment option, the principal limit is divided into one amount for the term or tenure payments and another amount for the line of credit payments. Each part of the principal limit increases independently at the same rate as the total principal limit increases under § 206.3. A payment under the line of credit may not exceed the difference between the current value of the principal limit set aside and the portion of the mortgage balance, including accrued interest and MIP, attributable to draws on the line of credit.

(e) *Payment of MIP and interest.* At the end of each month, interest accrued during the month shall be added to the mortgage balance. Monthly MIP shall be added to the mortgage balance when paid to the Secretary.

(f) *Mortgagee late charge.* The mortgagee shall pay a late charge to the mortgagor for any late payment. If the mortgagee does not mail or electronically transfer a scheduled monthly payment to the mortgagor on the first business day of the month or make a line of credit payment within 5 business days of the date the mortgagee received the request, the late charge shall be 10 percent of the entire amount that should have been paid to the mortgagor for that month or as a result of that request. For each additional day that the mortgagor does not receive payment, the mortgagee shall pay interest at the mortgage interest rate on the late payment. In no event shall the total late charge exceed five hundred dollars. Any late charge shall be paid from the mortgagee's funds and shall not be added to the mortgage balance.

(g) *No minimum payments.* A mortgagee shall not require, as a condition of providing a loan secured by a mortgage insured under this part, that the monthly payments under the term or tenure payment option or draws under the line of credit payment option exceed a minimum amount established by the mortgagee.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

§ 206.26 Change in payment option.

(a) *General.* The payment option may be changed as provided in this section.

(b) *Change due to initial repairs.* (1) If initial repairs after closing under § 206.47 are completed without using all of the funds set aside for repairs, monthly payments shall be recalculated in accordance with § 206.25 when repairs are completed.

(2) If repairs after closing under § 206.47 cannot be completed with the funds set aside for repairs, the mortgagor may draw additional funds needed to complete repairs, within the principal limit, and monthly payments shall be recalculated in accordance with § 206.25 when repairs are completed.

(3) If repairs are not completed when required by the mortgage, the mortgagee shall stop monthly payments and the mortgage shall convert to the line of credit payment option. Until the repairs are completed, the mortgagee shall make no line of credit payments except as needed to pay for repairs required by the mortgage.

(c) *Other changes.* As long as the mortgage balance is less than the principal limit, a mortgagor may request a change from any payment option to another or a payment of any amount (not to exceed the difference between

the principal limit and the sum of the mortgage balance and any set asides for repairs or servicing charges). A mortgage will continue to bear interest at a fixed or adjustable interest rate as agreed between the mortgagee and the mortgagor at loan origination. The mortgagee shall recalculate any future monthly payments in accordance with § 206.25.

(d) *Fee for change in payments.* The mortgagee may charge a fee, not to exceed twenty dollars, whenever payments are recalculated.

(e) *Limitations.* The Secretary may prescribe a limitation on the frequency of payment changes, a minimum notice period that a mortgagor must provide with a request under paragraph (c) of this section, or other limitations on changes by the mortgagor.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

§ 206.27 Mortgage provisions.

(a) *Form.* The mortgage shall be in a form meeting the requirements of the Secretary.

(b) *Provisions.* The mortgage shall explain how payments will be made to the mortgagor, how interest will be charged and when the mortgage will be due and payable. It shall also contain provisions designed to ensure compliance with this part and provisions on the following additional matters:

(1) Payments by the mortgagee under the term or tenure payment options shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor on the first business day of each month beginning with the first month after closing. Payments under the line of credit payment option shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor within five business days after the mortgagee has received a written request for payment by the mortgagor.

(2) The mortgagor shall maintain hazard insurance on the property in an amount acceptable to the Secretary and the mortgagee.

(3) The mortgagor shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to the insured mortgage and the second mortgage held by the Secretary.

(4) A mortgage may be prepaid in full or in part in accordance with § 206.209.

(5) The mortgagor must keep the property in good repair.

(6) The mortgagor must pay taxes, hazard insurance premiums, ground rents and assessments in a timely manner, except to the extent such property charges are paid by the mortgagee in accordance with § 206.205.

(7) The mortgagor shall be charged for the payment of monthly MIP.

(8) The mortgagor shall have no personal liability for payment of the mortgage balance. The mortgagee shall enforce the debt only through sale of the property. The mortgagee shall not be permitted to obtain a deficiency judgment against the mortgagor if the mortgage is foreclosed.

(9) If the mortgage is assigned to the Secretary under § 206.121(b), the mortgagor shall not be liable for any difference between the insurance benefits paid to the mortgagee and the mortgage balance including accrued interest, owed by the mortgagor at the time of the assignment.

(10) If State law limits the first lien status of the mortgage as originally executed and recorded to a maximum amount of debt or a maximum number of years, the mortgagor shall agree to execute any additional documents required by the mortgagee and approved by the Secretary to extend the first lien status to an additional amount of debt and an additional number of years and to cause any other liens to be removed or subordinated.

(c) *Date the mortgage comes due and payable.* (1) The mortgage shall state that the mortgage balance will be due and payable in full if (i) a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor, or (ii) a mortgagor conveys all of his or her title in the property and no other mortgagor retains title to the property in fee simple or on a leasehold interest as set forth in § 206.45(a).

(2) The mortgage shall state that the mortgage balance shall be due and payable in full, upon approval of the

Secretary, if any of the following occur:

(i) The property ceases to be the principal residence of a mortgagor for reasons other than death and the property is not the principal residence of at least one other mortgagor;

(ii) For a period of longer than 12 consecutive months, a mortgagor fails to occupy the property because of physical or mental illness and the property is not the principal residence of at least one other mortgagor; or

(iii) An obligation of the mortgagor under the mortgage is not performed.

(d) *Second mortgage to Secretary.* A second mortage to secure any payments by the Secretary as provided in § 206.121(c) must be given to the Secretary before a mortgage insurance certificate is issued for the first mortgage. The second mortgage shall be junior only to the insured mortgage and in a form meeting the requirements of the Secretary which shall be similar to requirements for the insured mortgage. The mortgagee shall pay all expenses of preparing and recording the second mortgage.

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[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

§ 206.31 Allowable charges and fees.

(a) *Fees at closing.* The mortgagee may collect, either in cash at the time of closing or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination of the mortgage loan:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan: *Provided,* that the Secretary may establish limitations on the amount of any such charge which can be included in the mortgage loan.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the mortgagor;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Such other charges as may be authorized by the Secretary.

(b) *Repair administration fee.* If the property requires repairs after closing in order to meet HUD requirements, the mortgagee may collect a fee as compensation for administrative duties relating to repair work pursuant to § 206.47(c), not to exceed the greater of one and one-half percent of the amount advanced for the repairs or fifty dollars. The mortgagee shall collect the repair fee by adding it to the mortgage balance.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

Eligible Mortgagors

§ 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the mortgagee submits the application for insurance under § 206.15.

§ 206.35 Title held by mortgagor.

The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage.

§ 206.37 Credit standing.

Each mortgagor must have a general credit standing satisfactory to the Secretary.

§ 206.39 Principal residence.

The property must be the principal residence of each mortgagor at closing. For purposes of this section, the property will be considered to be the principal residence of any mortgagor who is temporarily or permanently in a health care institution as long as the property is the principal residence of at least one other mortgagor who is not in a health care institution.

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names and addresses of housing counseling agencies which have been approved by the Secretary as responsible and able to provide the information described in paragraph (b) of this section. The mortgagor must receive counseling.

(b) *Information to be provided.* A counselor shall discuss the following information with the mortgagor:

(1) Options other than a home equity conversion mortgage, including a mortgage insured under this part, that are available to the mortgagor, including other housing, social service, health, and financial options;

(2) Other home equity conversion options that are or may become available to the mortgagor, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

(3) The financial implications of entering into a home equity conversion mortgage, including a mortgage insured under this part;

(4) A disclosure that a home equity conversion mortgage, including a mortgage insured under this part, may have tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and heirs of the homeowner; and

(5) Any other information the Secretary may require.

(c) *Certificate.* The counselor will provide the mortgagor with a certificate stating that the mortgagor has received counseling. The mortgagor shall provide the mortgagee with a copy of the certificate.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.43 Information to mortgagor.

(a) *Explanation of mortgage terms.* At the time the mortgagee provides the mortgagor with a loan application, the mortgagee shall provide each mortgagor with a copy of the mortgage forms. At that time the mortgagee shall identify and explain to the mortgagor the principal provisions of the mortgage.

(b) *Statement of payment procedures.* At the time the mortgagee provides the mortgagor with a loan application, the mortgagee shall give to each mortgagor an unsigned, written statement prepared by the Secretary of the procedures to be followed to ensure that timely payments are made by the mortgagee. After the mortgage insurance certificate is issued, the Secretary will provide a signed copy of this statement of procedures to the mortgagor, pursuant to § 206.119.

(Approved by the Office of Management and Budget under control number 2528-0133)

Eligible Properties

§ 206.45 Eligible properties.

(a) *Title.* A mortgage must be on real estate held in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor. The mortgagee shall submit to the Secretary with the application for insurance a commitment for mortgagee's title insurance satisfactory to the Secretary. If the Secretary determines that title insurance for reverse mortgages is not available for reasonable rates in a State, then the Secretary may specify other acceptable forms of title evidence in lieu of title insurance.

(b) *Type of property.* The property shall include a dwelling designed principally as a one-family residence. The dwelling may be connected with other dwellings by a party wall or otherwise. A condominium unit designed for one-family occupancy shall also be an eligible property.

(c) *Flood insurance and property location.* The provisions of § 203.16a of this chapter pertaining to flood insurance and § 203.40 of this chapter pertaining to the location of the property are incorporated by reference.

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, § 200.810(d) of this chapter shall apply unless the mortgagor certifies that no child who is less

than seven years of age resides or is expected to reside in the dwelling.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.47 Property standards; repair work.

(a) *Need for repairs.* Properties must meet the Minimum Property Standards of the Secretary in order to be eligible. Properties which do not meet the property standards must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage.

(b) *Assurance that repairs are made.* The mortgage may be closed before the repair work is completed if the Secretary estimates that the cost of the remaining repair work will not exceed 15 percent of the maximum claim amount and the mortgage contains provisions approved by the Secretary concerning payment for the repairs.

(c) *Role of mortgagee.* The mortgagee shall cause one or more inspections of the property to be made by an inspector approved by the Secretary in order to ensure that the repair work is satisfactory, and prior to the release of funds for the repairs. The mortgagee shall hold back a portion of the contract price attributable to the work done before each interim release of funds, and the total of the hold backs will be released after the final inspection and approval of the release by the mortgagee. The mortgagee shall ensure that all mechanics' and materialmen's liens are released of record. A fee as established in § 206.31(b) may be charged by the mortgagee as compensation for administration of the repair provisions of the mortgage.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary.

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge

§ 206.101 Sale, assignment and pledge of insured mortgages.

The provisions of §§ 203.430 through 203.435 of this chapter shall be applicable to mortgages eligible for insurance under this part.

Mortgage Insurance Premiums

§ 206.103 Payment of MIP.

The payment of any MIP under this subpart shall be made to the Secretary by the mortgagee in cash, until the contract of insurance is terminated.

§ 206.105 Amount of MIP.

(a) *Initial MIP.* The mortgagee shall pay to the Secretary an initial MIP of two percent of the maximum claim amount.

(b) *Monthly MIP.* Monthly MIP will accrue daily on the mortgage balance at a rate equivalent to one-half of one percent per annum and shall be added to the mortgage balance when paid to the Secretary.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.107 Mortgagee election of assignment or shared premium option.

(a) *Election of option.* Before the mortgage is submitted for insurance endorsement, the mortgagee shall elect either the assignment option or the shared premium option.

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Secretary at the time that the mortgage balance, including accrued interest and MIP, equals the maximum claim amount, if:

(i) The mortgagee is current in making the required payments under the mortgage to the mortgagor;

(ii) The mortgagee is current in its payment of the MIP (and late charges and interest on the MIP, if any) to the Secretary;

(iii) The mortgage is not due and payable under § 206.27(c)(1); and

(iv) The mortgagee has not informed the Secretary of an event described in § 206.27(c)(2), or the Secretary has been so informed but has denied approval for the mortgage to be due and payable. At the mortgagee's option, the mortgagee may forgo assignment of the mortgage and file a claim under any of the circumstances described in § 206.123(a)(2)–(5).

(2) Under the shared premium option, the mortgagee may not assign a mortgage to the Secretary unless the mortgagee fails to make payments and the Secretary demands assignment (§ 206.123(a)(2)), but the mortgagee shall only be required to remit a reduced monthly MIP to the Secretary. The mortgagee shall collect from the mortgagor the full amount of the monthly MIP provided in § 206.105(b) but shall retain a portion of the monthly MIP paid by the mortgagor as compensation for the default risk assumed by the mortgagee. The portion of the MIP to be retained by a mortgagee shall be determined by the Secretary as calculated in § 206.109. For a particular mortgage, the applicable portion shall be determined as of the date of the commitment. The mortgagee retains the right to file a claim under any of the circumstances described in § 206.123(a)(2)–(5).

(b) *No election for shared appreciation.* Shared appreciation mortgages shall be insured by the Secretary only under the shared premium option.

§ 206.109 Amount of mortgagee share of premium.

Using the factors provided by the Secretary, the amount of the mortgagee share of the premium shall be determined for each mortgage based upon the age of the youngest mortgagor and the expected average mortgage interest rate.

§ 206.111 Due date of MIP.

(a) *Initial MIP.* The mortgagee shall pay the initial MIP to the Secretary within fifteen days of closing and as a condition to the endorsement of the mortgage for insurance.

(b) *Monthly MIP.* Each monthly MIP shall be due to the Secretary on the first business day of each month except the month in which the mortgage is closed.

§ 206.113 Late charge and interest.

(a) *Late charge.* Initial MIP remitted to the Secretary after the payment date in § 206.111(a) and monthly MIP remitted to the Secretary 10 days after the payment date in § 206.111(b) shall include a late charge of four percent of the amount paid.

(b) *Interest.* In additon to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any initial MIP remitted to the Secretary more than 30 days after closing, and interest on any monthly MIP remitted to the Secretary more than 30 days after the payment date prescribed in § 206.111(b). Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

(c) *Paid by mortgagee.* Any late charge owed by the mortgagee shall be paid from the mortgagee's funds and shall not be added to the mortgage balance of the mortgagor.

[54 FR 24833, June 9, 1989; 54 FR 32068, Aug. 4, 1989]

§ 206.115 Termination.

When the insurance contract is terminated, the mortgagee shall pay the monthly MIP which has accrued for the current month and which has not yet been paid to the Secretary.

HUD Responsibility to Mortgagors

§ 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary will hold a second mortgage to secure repayment by the mortgagor, see § 206.27(d).

§ 206.119 Written statement of procedures to mortgagor.

When the mortgage is insured, the Secretatry shall provide the mortgagor with a signed statement of procedures to ensure that all of the funds

due under the mortgage will be received by the mortgagor, or paid to a third party on behalf of the mortgagor. The statement shall specify (a) the HUD office to contact in case of a late payment, and (b) the procedures which the mortgagor must follow to make a request for payment by the Secretary.

§ 206.121 Secretary authorized to make payments.

(a) *Investigation.* The Secretary will investigate all complaints by a mortgagor concerning late payments. If the Secretary determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Secretary shall pay such payments and late charges to the mortgagor.

(b) *Reimbursement or assignment.* The Secretary may demand that within 30 days from the demand, the mortgagee reimburse the Secretary, with interest from the date of payment by the Secretary, or assign the insured mortgage to the Secretary. Interest shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual. If the mortgagee complies with the reimbursement demand, then the contract of insurance shall not be affected. If the mortgagee complies by assigning the mortgage for record within 30 days of the demand, then the Secretary shall pay an insurance claim as provided in § 206.129(e)(3) and assume all responsibilities of the mortgagee under the first mortgage. If the mortgagee fails to comply with the demand within 30 days, the contract of insurance will terminate as provided in § 206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the mortgagor by the Secretary will be secured by the second mortgage required by § 206.27(e). Payments will be due and payable in the same manner as under the insured first mortgage. The liability of the mortgagor under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the mortgagor (including MIP), and shall exclude accrued interest, whether or not it has been included in the mortgage balance, and shared appreciation, if any. Interest will stop accruing on the first mortgage when the Secretary begins to make payments under the second mortgage. The first mortgage will not be due and payable until the second mortgage is due and payable.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

CLAIM PROCEDURE

§ 206.123 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of § 206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Secretary;

(2) The mortgagee is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Secretary pursuant to the Secretary's demand, as provided in § 206.121(b);

(3) The mortgagor sells the property for less than the mortgage balance and the mortgagee releases the mortgage of record to facilitate the sale, as provided in § 206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g), for an amount which does not satisfy the mortgage balance; or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the mortgage balance, as provided in § 206.125(e).

(b) *Expanded definition of mortgagor.* The term "mortgagor" as used in this subpart shall have the same meaning as stated in § 206.3, except that in reference to a sale by the mortgagor, the term shall also mean the mortgagor's estate or personal representative.

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§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in § 206.27(c)(1), or one of the conditions stated in § 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable. The mortgagee shall require the mortgagor to (i) pay the mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least 95% of the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied towards the mortgage balance; or (iii) provide the mortgagee with a deed in lieu of foreclosure. The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. The mortgagee may require the mortgagor to pay any costs that the mortgagee incurred to reinstate the mortgagor, including forclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the mortgage balance. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceeding the current notification to the mortgagor that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(b) *Appraisal.* The property may be appraised upon the mortgagor's request at the time the mortgagor is sent the notice that the mortgage is due and payable, or in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale. Whenever an appraisal is requested or required, the mortgagee shall notify the Secretary to cause an appraisal of the property to be made. The Secretary shall inform the mortgagee and the mortgagor in writing of the appraised value of the property. The appraisal shall be at the mortgagor's expense.

(c) *Sale by mortgagor.* Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the lesser of the mortgage balance or the appraised value (determined under § 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for at least the lesser of the mortgage balance or five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the second mortgage required under § 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Secretary under § 206.27(e)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within three months of giving notice to the mortgagor that the mortgage is due and payable, or within such additonal time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is situated do not permit the commencement of the foreclosure within three months from the date of the notice to the mortgagor that the notice is due and payable, the mortgagee shall commence foreclosure within three months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee shall give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings, and shall exercise reasonable

diligence in prosecuting such proceedings to conclusion.

(4) The mortgagee shall bid at the foreclosure sale an amount equal to the appraised value of the property.

(e) *Other bidders at foreclosure sale.* If a party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of sale shall be applied to the mortgage balance.

(f) *Deed in lieu of foreclosure.* (1) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the mortgagor if the mortgagee is able to obtain good and marketable title from the mortgagor.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the mortgagor and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by foreclosure or deed in lieu of foreclosure, the mortgagee shall make diligent efforts to sell the property within six months from the date the mortagee acquired the property. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law or the requirements of the Secretary of HUD or the Secretary of Veterans Affairs if the sale of the property is financed with a mortgage insured by the Secretary of HUD or guaranteed, insured or taken by the Secretary of Veterans Affairs.

(3) The provisions of § 204.305(b) of this chapter shall be followed by the mortgagee to avoid conflicts of interest.

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[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

§ 206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 15 days after the sale of the property by the mortgagee. Application shall be made by notifying the Secretary of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal of the property to be made. Within 15 days of receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a) of this section, substituting the appraised value for the sale price. The mortgagee shall bear the cost of the appraisal.

(b) *Party other than the mortgagee acquires title.* The mortgagee shall apply for the payment of the insurance benefits within 15 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Secretary of the sale of the property and the sale price.

(c) *Mortgagee assigns the mortgage.* The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Secretary. The application for the payment of the insurance benefits shall include the items listed in § 203.351(a) of this chapter and the certification required under § 203.353 of this chapter.

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§ 206.129 Payment of claim.

(a) *General.* If the claim for the payment of the insurance benefits is acceptable to the Secretary, payment shall be made in cash in the amount determined under this section.

(b) *Limit on claim amount.* In no case may the claim paid under this subpart exceed the maximum claim amount. The interest allowance provided in paragraphs (d)(2)(iii), (e)(2) and (f)(2) of this section shall not be

included in determining the limit on the claim amount.

(c) *Shared appreciation mortgages.* The terms "mortgage balance" and "accrued interest" as used in this section do not include interest attributable to the mortgagee's share of the appreciated value of the property.

(d) *Amount of payment—mortgagee acquires title or is unsuccessful bidder.* This paragraph describes the amount of payment if the mortgagee acquires title by purchase, foreclosure, or deed in lieu of foreclosure, or when a party other than the mortgagee is the successful bidder at the foreclosure sale.

(1) The amount of the claim shall be computed by (i) totalling the mortgage balance, (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which has not been added to the mortgage balance as of the due date (defined in the following sentence), and allowances for items set forth in paragraph (d)(2) of this section, and (ii) subtracting from that total the amount for which the property was sold (or the appraised value determined under § 206.127(a)) and the items set forth in paragraph (d)(3) of this section. "Due date" means the date when the mortgagee notifies the Secretary under § 206.27(c)(1) that the mortgage became due and payable, or, if applicable, the date the Secretary granted approval under § 206.27(c)(2) for the mortgage to become due and payable.

(2) The claim shall include the following items:

(i) Items listed in § 203.402(a), (b), (c), (d), (e), (g) and (j) of this chapter, and § 204.322(l) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75.00, whichever is the greater. Costs of acquiring the property otherwise than by foreclosure may include an additional amount not to exceed $200 paid to the mortgagor for the execution of the deed in lieu of foreclosure.

(iii) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

(iv) Costs of any appraisal under § 206.127 if not otherwise included in the mortgage balance.

(3) There shall be deducted from the amount computed in paragraph (d)(1)(i) of this section:

(i) The items listed in § 203.403 of this chapter; and

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(e) *Amount of payment—assigned mortgages.* This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Secretary under § 206.107(a)(1) or § 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1), the amount of payment shall be computed by subtracting from the maximum claim amount the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the mortgage was assigned to the Secretary to the date the claim is paid, if the claim had been paid in debentures, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in the payment of the claim shall

be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

(3) When a mortgagee assigns a mortgage under § 206.121(b) after demand by the Secretary, the mortgagee will not receive the entire claim payment as contained in paragraphs (e)(1) and (2) of this section. The amount of the claim shall be computed by (i) totalling the payments made by the mortgagee to the mortgagor or for the benefit of the mortgagor (including MIP), and subtracting from the total (ii) the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter. The claim shall also be reduced by an amount determined by the Secretary to reimburse the Secretary for administrative expenses incurred in assuming the mortgagee's responsibility under the mortgage, which may include expenses for staff time. If more than one mortgage is assigned to the Secretary, the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Secretary. The claim shall not include accrued interest whether or not it has been included in the mortgage balance.

(f) *Amount of payment-mortgagor sells the property.* This paragraph describes the amount of payment if the mortgagor sells the property to one other than the mortgagee for less than the mortgage balance, and the mortgagee releases the mortgage to facilitate the sale.

(1) The amount of the claim shall be computed by (i) totalling the mortgage balance (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which has not been added to the mortgage balance on the date the deed is recorded, and allowances for items set forth in paragraphs (d)(2)(i) and (iv) of this section as applicable, and subtracting from the total (ii) the net proceeds of the sale paid to the mortgagee and the items set forth in paragraph (d)(3) of this section.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time (or within such further time as the Secretary may approve in writing), and in a manner satisfactory to the Secretary, the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

Condominiums

§ 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

(a) *Additional requirements.* The requirements of this subpart shall be applicable to mortgages on individual dwelling units in a condominium, except as modified by this section.

(b) *References.* The term "property" as used in this subpart shall be construed to include the individual dwelling unit and the undivided interest in the common areas and facilities as may be designated.

(c) *Assignment of the mortgage.* If the mortgagee assigns the mortgage on the individual dwelling unit to the Secretary, the mortgagee shall certify:

(1) To any changes in the plan of apartment ownership including the administration of the property;

(2) That as of the date the assignment is filed for record, the family unit is assessed and subject to assessment for taxes pertaining only to that unit; and

(3) To the condition of the property as of the date the assignment is filed for record. Section 234.275 of this

chapter concerning the certification of condition is incorporated by reference.

(d) *Condition of the multifamily structure.* The provisions of § 234.270 (a) and (b) of this chapter concerning the condition of the multifamily structure in which the property is located shall be applicable to mortgages insured under this part which are assigned to the Secretary.

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[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

TERMINATION OF INSURANCE CONTRACT

§ 206.133 Termination of insurance contract.

(a) *Payment of the mortgage.* The contract of insurance shall be terminated if the mortgage is paid in full.

(b) *Acquisition of title.* If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Secretary that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(c) *Mortgagee fails to make payments.* If the mortgagee fails to make the payments to the mortgagor as required under the mortgage, and does not reimburse the Secretary or assign the mortgage to the Secretary within 30 days from the demand by the Secretary for reimbursement or assignment, the contract of insurance shall automatically terminate. The Secretary may later reinstate the contract of insurance, which shall continue in force as if no termination had occurred, upon reimbursement with interest as provided in § 206.121. Upon reinstatement, the mortgagee shall be liable for all MIP which would have been due if no termination had occurred, including late charge and interest as provided in § 206.113.

(d) *Notice of termination.* The mortgagee shall give written notice to the Secretary within 15 days of the occurrence of an event under paragraphs (a) and (b) of this section. No contract of insurance shall be terminated under paragraphs (a) or (b) of this section unless such notice is given.

(e) *Voluntary termination.* The mortgagor and the mortgagee may jointly request the Secretary to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Secretary shall make certain that the mortgagor is aware of the consequences which could arise out of the voluntary termination of the contract of insurance. The provisions of § 203.295 of this chapter concerning voluntary termination shall apply when a contract of insurance under this part is voluntarily terminated.

(f) *Effect of termination.* Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated except as otherwise provided in this part.

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Subpart D—Servicing Responsibilities

§ 206.201 Mortgage servicing generally; sanctions.

(a) *General.* This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. Failure to comply with this subpart shall not be a basis for denial of the insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD mortgagee approval.

(b) *Importance of timely payments.* The paramount servicing responsibility is the need to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including Part 24 (Debarment, Suspension and Limited Denial of Participation), and Part 25 (Mortgagee Review Board).

(c) *Responsibility for servicing.* The provisions of § 203.502 of this chapter pertaining to the responsibility for

servicing shall apply to mortgages insured under this part, except that references in that section to payments by a mortgagor shall mean payments to the mortgagor.

§ 206.203 Providing information.

(a) *Annual statement.* The mortgagee shall provide to the mortgagor an annual statement regarding the activity of the mortgage for each calendar year. The statement shall summarize the total principal amount for the year which has been paid to the mortgagor under the mortgage, the MIP paid to the Secretary and charged to the mortgagor, the total amount of deferred interest added to the mortgage balance, the total mortgage balance and the current principal limit. If the mortgagor has elected to have the mortgagee pay property charges pursuant to § 206.205, the mortgagee shall include an accounting of all payments for property charges for the year. The statement shall be provided to the mortgagor no later than January 31 for each preceding year until the mortgage is paid in full by the mortgagor.

(b) *Line of credit and payment change statements.* The mortgagee shall provide the mortgagor with a statement of the account every time a line of credit payment is made under the line of credit payment option or from a line of credit set aside, and every time that monthly payments are recalculated. The Secretary shall specify the required information to be included in the statement.

(c) *Servicing.* The provisions of § 203.508 (a) and (b) of this chapter pertaining to loan information to mortgagors shall also be applicable to mortgages insured under this part. The mortgagee, as part of the information required under § 203.508(b) of this chapter, shall provide the mortgagor with the name of the mortgagee's employee who has been specifically designated to respond to inquiries concerning mortgages insured under this part. Such information shall be provided annually and whenever the servicer or the designated employee changes.

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§ 206.205 Property charges.

(a) *General.* The mortgagor shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and assessments in a timely manner and shall provide evidence of payment to the mortgagee as required in the mortgage.

(b) *Election.* A mortgagor may elect to require the mortgagee to pay property charges by withholding funds from monthly payments due to the mortgagor or by charging such funds to a line of credit. The mortgagor may make or rescind such an election at any time. If the sum of the mortgage balance and any unused set asides for repairs and servicing charges has reached the principal limit or the mortgage funds are otherwise insufficient to pay the property charges, the mortgagor shall pay such items as provided in paragraph (a) of this section, even though the mortgagor elected payment to be made by the mortgagee.

(c) *Mortgagor's failure to make payments.* If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account. If a pattern of missed payments occurs, the mortgagee may establish procedures to pay the property charges from the mortgagor's funds as if the mortgagor elected to have the mortgagee pay the property charges under this section.

(d) *Assignment of mortgage to the Secretary.* If the insured first mortgage is assigned to the Secretary under § 206.107(a)(1) or § 206.121(a), or if payments are made through the second mortgage under § 206.121(c), the Secretary is not required to assume the mortgagee's responsibility under paragraph (b) of this section, despite the election by the mortgagor.

(e) *Mortgagee's responsibilities.* (1) Funds withheld from payments due to the mortgagor for property charges under paragraph (b) of this section shall not be paid into an escrow ac-

count. When property charges are actually paid, the mortgagee may add the amount paid to the mortgage balance.

(2) It is the mortgagee's responsibility to make disbursements for property charges before bills become delinquent. Mortgagees must establish controls to ensure that the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for property charges must not be charged to the mortgagor unless it can be shown that the penalty was the direct result of the mortgagor's error or omission. Early payment of a bill to take advantage of a discount should be made whenever it is to the mortgagor's benefit.

(3) Not later than the end of the second loan year the mortgagee shall establish a system for the periodic analysis of the amounts withheld from monthly payments. The analysis shall be performed at least once a year thereafter. The amount shall be adjusted, after analysis, to provide sufficient available funds to make anticipated disbursements during the ensuing year. The mortgagor shall be given at least ten days notice of adjustment in the amount of withholding and an adequate explanation of the reasons for any change. When the amount withheld is analyzed in accordance with this paragraph, any surplus shall be paid to the mortgagor and added to the mortgage balance. Any shortage shall be corrected through increasing the monthly withholding as provided in paragraph (e)(4) of this section. If amounts withheld are insufficient to pay a property charge before it is delinquent, and the mortgagor could request a payment equal to the shortage under § 206.26(c), then the mortgagee shall pay the full property charge and treat payment of the shortage as a payment requested by the mortgagor under § 206.26(c).

(4) The mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require withholding in excess of the current estimated total annual requirement, unless expressly requested by the mortgagor. Each monthly withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(f) *Set aside for first year property charges.* If the mortgagor elects to require the mortgagee to pay property charges and to receive payments under the term or tenure payment option, then the mortgagee shall set aside at closing a portion of the principal limit that will be sufficient to pay such items for the period beginning in the last date on which each such charge would have been paid under the normal lending practices of the mortgagee and local custom (if each such date constitutes prudent lending practice), and ending in the due date of the first monthly payment to the mortgagor.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

§ 206.207 Allowable charges and fees after endorsement.

(a) *Reasonable and customary charges.* The mortgagee may collect reasonable and customary charges and fees from the mortgagor after insurance endorsement by adding them to the mortgage balance, but only for: Items listed in § 203.552(a) (6), (9), (11) and (13) of this chapter; items authorized by the Secretary under § 203.552(a)(12) of this chapter or as provided at § 206.26(d); or charges and fees related to additional documents described in § 206.27(b)(10).

(b) *Servicing charges.* The mortgagee may collect a fixed monthly charge for servicing activities of the mortgagee or servicer if (1) the charge is authorized by the Secretary, (2) the charge is disclosed as required by § 206.43 to the mortgagor in a manner acceptable to the Secretary at the time the mortgagee provides the mortgagor with a loan application, (3) amounts to pay the charge are set aside as a portion of the principal limit, and (4) the charge is payable only from the set aside.

§ 206.209 Prepayment.

(a) *No charge or penalty.* The mortgagor may prepay a mortgage in full or in part without charge or penalty.

(b) *Tenure or term option.* When payments are being made under the term or tenure option, a mortgage may be prepaid at any time and the provisions of § 203.558 (a), (c), and (e) of this chapter shall be followed in handling a prepayment of such a mortgage insured under this part, except that the term "installment due date" shall mean the date of payments to the mortgagor instead of payments by the mortgagor.

(c) *Line of credit option.* When payments are being made under the line of credit option, a mortgage may be prepaid after giving two weeks notice to the mortgagee. If the mortgagee accepts the prepayment without two weeks notice, interest may be charged on the prepaid amount for a two week period after the date of notice. Otherwise, no interest shall be charged on the prepaid amount after the date of prepayment.

§ 206.211 Annual determination of principal residence.

At least once during each calendar year, the mortgagee shall determine whether or not the property is the principal residence of at least one mortgagor. The mortgagee shall require each mortgagor to make an annual certification of his or her principal residence, and the mortgagee may rely on the certification unless it has information indicating that the certification may be false.

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AUTHORITY: Secs. 207 and 211, National Housing Act (12 U.S.C. 1713, 1715b), and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.258b are also issued under sec. 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

SOURCE: 36 FR 24537, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

APPLICATION AND COMMITMENTS

§ 207.1 Application, SAMA letter, commitments and required fees.

(a) *Application.* An application for the issuance of a site appraisal and market analysis (SAMA) letter must be submitted by the project sponsor. An application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD field office on FHA approved forms. No application shall be considered unless accompanied by the exhibits required by the form. An applicant may initially elect to submit an application for a SAMA letter, a conditional commitment or a firm commitment depending upon the completeness of the drawings, specifications and other required exhibits.

(1) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter.

(2) *Application fee—conditional commitment.* An application-commitment fee of $1 per thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the application fee for an unexpired SAMA letter has been collected. A fee of $2 per one thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the SAMA application fee has been paid but the SAMA letter has expired or in cases in which a SAMA application fee has not been paid.

(3) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to prior fees received in connection with applications for a SAMA letter or a conditional commitment, will aggregate $3 per thousand dollars of the requested mortgage amount to be insured The payment of an application-commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or contracted, pursuant to the Atomic Energy Community Act of 1955, as provided in § 207.31(b)(4).

(b) *Effect of SAMA letter, conditional and firm commitment*—(1) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a commitment is received before expiration of the SAMA letter:

(i) The land value fully improved (with offsite improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units.

(iii) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

(iv) The applicable land use intensity number, from which may be determined the maximum floor area and minimum acceptable recreational, parking, living and open space areas acceptable to the Commissioner for the proposed project.

(2) *Conditional commitment.* The issuance of a conditional commitment indicates completion of technical processing involving the estimated cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, the supportable cost, the financial and credit capacity of the sponsorship, financial requirements and the mortgage amount.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(c) *Term of SAMA letter, conditional commitment and firm commitment*—(1) *SAMA letter.* A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Conditional commitment.* A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(3) *Firm commitment.* (i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Rejection of an application.* A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or conditional commitment, shall be grounds for rejection of an application for conditional or firm commitment, respectively. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(e) *Inspection fee.* The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid for as follows:

(1) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(2) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

(f) *Fees on increases*—(1) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, and additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(g) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(h) *Transfer fee.* Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

(i) *Refund of fees.* If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commit-

ment fees or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[36 FR 24537, Dec. 22, 1971, as amended at 39 FR 12002, Apr. 2, 1974; 40 FR 22828, May 27, 1975; 41 FR 14861, Apr. 8, 1976]

§ 207.2 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

Eligible Mortgages

§ 207.3 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(2) Executed by a mortgagor with the qualifications as provided in this subpart.

(3) A first lien on property that conforms with the property standards prescribed by the Commissioner.

(b) *Disbursement of the mortgage.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

§ 207.4 Maximum mortgage amounts.

(a) *Dollar and loan-to-value limitations.* A mortgage may involve a principal obligation not in excess of the lesser of the following:

(1) 90 percent of the estimated value (replacement cost if project is located in Alaska or Guam) of the project; or

(2) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $25,350 without a bedroom.

(ii) $28,080 with one bedroom.

(iii) $33,540 with two bedrooms.

(iv) $41,340 with three bedrooms.

(v) $46,800 with four or more bedrooms.

(3) The dollar amount limitations per family unit provided in paragraph (a)(2) of this section may be increased by up to 20 percent if such increase is necessary to account for the cost of the purchase and installation of a solar energy system. Solar energy system means any addition, alteration or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type struc-

tures of sound standards of construction and design, the Commissioner may:

(1) Increase the dollar amount limitations per family unit, as provided in paragraph (a)(2) of this section, to not to exceed:

(i) $29,250 without a bedroom.

(ii) $32,760 with one bedroom.

(iii) $40,170 with two bedrooms.

(iv) $50,310 with three bedrooms.

(v) $56,885 with four or more bedrooms.

(2) Further increase the dollar amount limitation provided in paragraph (b)(1) of this section by up to 20 percent if such increase is necessary to account for the cost of the purchase and installation of a solar energy system as defined in paragraph (a)(3) of this section.

(c) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase the dollar amount limitations in paragraphs (a)(2) and (b)(1) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (i) The Commissioner's estimate of the cost of the repair or rehabilitation; plus (ii) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (i) The Commissioner's estimate of the cost of the repair or rehabilitation and (ii) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(e) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

(f) *Loans to cover 2-year operating loss—*(1) *Operating loss determination.* When the Commissioner determines

that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 207.7 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

[36 FR 24537, Dec. 22, 1971, as amended at 39 FR 32435, Sept. 6, 1974; 41 FR 11286, Mar. 18, 1976; 41 FR 41880, Sept. 23, 1976; 44 FR 65587, Nov. 14, 1979; 53 FR 8882, Mar. 18, 1988]

§ 207.5 Maturity.

The mortgage shall have a maturity satisfactory to the Commissioner, depending upon the risk involved and the general character of the project, and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 207.6 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 207.7 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

(c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[36 FR 24537, Dec. 22, 1971, as amended at 49 FR 19458, May 8, 1984]

§ 207.8 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 207.9 Covenant against liens.

(a) The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be required in connection with the insurance of an operating loss loan or a supplementary loan. An inferior lien may be created on a project which is subject to a mortgage insured pursuant to § 207.32a: *Provided*, That such lien will be limited by § 207.32a(j).

(b) The covenant required under paragraph (a) of this section shall not apply where a lien inferior to the lien of the insured mortgage is given in favor of a Federal, State or local governmental agency or instrumentality under such circumstances as may be approved by the Commissioner, provided the source of funds for repayment of the inferior lien is limited to surplus cash or residual receipts.

[36 FR 24537, Dec. 22, 1971, as amended at 40 FR 43899, Sept. 24, 1975; 48 FR 35391, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

§ 207.10 Covenant for fire insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of completion of the entire project or units thereof. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as interests may appear.

§ 207.11 Soundness of project.

No mortgage shall be accepted for insurance unless the Commissioner finds that the property or project with respect to which the mortgage is executed is economically sound, except that as to mortgages covering property located in Alaska or in Guam, or in Hawaii, no mortgage shall be accepted for insurance unless the Commissioner finds that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska, or in Guam or in Hawaii.

§ 207.12 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 207.13 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessment and fire and other hazard insurance premiums;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 207.14 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (d) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30

days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24537, Dec. 22, 1971, as amended at 51 FR 2359, Jan. 16, 1986]

§ 207.15 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds or other obligations shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under the contract of mortgage insurance to the Trustee, without liability or accountability to the bond holders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

§ 207.16 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the Commissioner as to each of the following points:

(1) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. Dis-

trict Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

§ 207.16a Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8882, Mar. 18, 1988]

Eligible Mortgagors

§ 207.17 Classification; Disclosure.

In order to be eligible as a mortgagor under this subpart the applicant must be:

(a) *Private mortgagors.* Any mortgagor approved by the Commissioner, which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation.

(b) *Disclosure and verification of Social Security and Employer Identification Numbers.* To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(c) *Public mortgagors.* A federal or state instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend or redevelopment or housing corporation formed under and restricted by federal or state laws or regulations of a state banking or insurance department as to rents, charges, capital structure, rate of return, or methods of operation.

(Approved by the Office of Management and Budget under control number 2502-0118)

[36 FR 24537, Dec. 22, 1971, as amended at 54 FR 39693, Sept. 27, 1989]

Supervision of Mortgagors

§ 207.18 In general.

(a) In the case of an eligible mortgagor which is regulated or restricted for the purposes and in the manner provided in § 207.17(b), or in the case in which the mortgagor or mortgagee is the Alaska Housing Authority, or the Government of Guam or Hawaii or any agency or instrumentality thereof, liens inferior to the lien of the insured mortgage may be allowed against properties of such mortgagors: *Provided,* That the mortgagor in any such case, must have initial funds which may be considered in lieu of the equity required of other mortgagors, and such funds (which may be in the form of Government loans, grants, or subsidies or in other form) if sufficient in amount, will be considered satisfactory provided they do not create a lien against the property prior to that of the insured mortgage.

(b) In all other cases a mortgagor must certify at final endorsement of the loan for insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner as to terms, form and amount.

(c) In the case of a private corporation, the Commissioner's regulations or restrictions will be set forth in its certificate of incorporation or charter under which such mortgagor is created, and will be made effective through the issuance of certain shares of special stock, which stock will acquire majority voting rights in the event of default under the mortgage or violation of a provision of the charter. Such special stock or interest issued to the Commissioner, his nominee or nominees and/or the Federal

Housing Administration shall be in sufficient amount to constitute under the laws of the particular state a valid special class of stock or interest and shall be issued in consideration of the payment by the Commissioner of not exceeding in the aggregate $100. Such stock shall be represented by a certificate or certificates issued in the name of the Commissioner, and/or in the name of his nominee or nominees, and/or in the name of the Federal Housing Administration, as the Commissioner shall require. In the case of a private association or trust entity, or whenever, for any reason satisfactory to the Commissioner, such regulations or restrictions are not feasible as to a particular mortgagor through the issuance of shares of special stock, such regulations or restrictions shall be effected by means of a regulatory agreement and/or other contractual documents between the Commissioner and the mortgagor in such form and in such manner as shall be satisfactory to the Commissioner. Upon the termination of all obligations of the Commissioner under his contract of mortgage insurance, or any succeeding contract or agreement covering the mortgage obligation, all regulations and restrictions of the mortgagor shall cease, the shares of special stock shall be surrendered by the Commissioner upon reimbursement of his payments therefor, plus accrued dividends, if any, thereon, and any regulatory agreement or contract shall terminate.

§ 207.19 Required supervision of private mortgagors.

The following are the items which will be regulated or restricted, except in the case of mortgagors of the character described in § 207.17(b):

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity beneficial certificates of interest may be issued in such amounts and form as may be agreed upon by the mortgagor and the Commissioner.

(b) *Rate of return.* (1) Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after:

(i) The payment of:

(A) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Commissioner;

(B) All amounts required to be deposited in the Reserve Fund for Replacements;

(C) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(ii) The segregation of:

(A) An amount equal to the aggregate of all special funds required to be maintained by the project;

(B) All tenant security deposits held. No distributions of any kind may be made from borrowed funds.

(2) No distributions of any kind may be made from borrowed funds.

(3) Distributions may be made for projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies) only in accordance with the provisions on limitation on distributions of the applicable Section 8 regulation, contained at §§ 880.205, 881.205 or § 883.306 respectively; except that for small projects and partially-assisted projects, as defined in Part 880, 881 or 883, whichever is applicable, paragraphs (b)(1) and (b)(2) of this section shall apply.

(c) *Requirements incident to insurance of advances.* (1) The mortgagor shall deposit with the mortgagee, or in a depository satisfactory to the mortgagee and under control of the mortgagee, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of

construction, for allocation by the mortgagee to accruals for taxes, ground rates, mortgage insurance premiums, property insurance premiums, and assessments required by the terms of the mortgage:

(i) In the case of new construction, an amount equivalent to not less than two percent of the original principal amount of the mortgage.

(ii) In the case of rehabilitation, an amount satisfactory to the Commissioner.

(2) Before initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to the construction of the project. Such cash shall be held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such cash to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any mortgage money. If all or part of the funds required under this paragraph are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds, to pay the cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the mortgagor, that portion must be disbursed in full before the disbursement of the mortgage proceeds.

(3) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(4) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

(5) Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

(6) The mortgagor shall furnish assurance of completion of the project in the form of a personal indemnity agreement, corporate surety bonds for payment and performance, or a completion assurance agreement secured by a cash deposit. All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies issuing bonds and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner. The minimum requirements for assurance of completion are as follows:

(i) Where the estimated cost of construction or rehabilitation is $500,000 or less, the assurance of completion will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as general contractor, or by the

individuals operating as the general contractor. Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, the assurance shall be as set forth in paragraph (c)(6) (ii) or (iii) of this section.

(ii) Where the structure contains no elevator, or where the structure contains an elevator and is three stories or less, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent of the amount of HUD estimate of construction or rehabilitation cost.

(iii) Where the structure contains an elevator and is four stories or more, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 25 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(iv) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(7) The mortgagee may accept, in lieu of a cash deposit required by paragraphs (c) (1), (3), (4) and (6) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. If all or part of the funds required under paragraph (c)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept for the portion so provided, in lieu of the cash deposit required by paragraph (c)(2) of this section, either an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution, or an agreement which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee. The agreement referred to in the preceding sentence shall provide that:

(i) HUD retains the right to approve construction advances after giving full consideration to any reported noncompliance by the governmental agency or instrumentality so long as HUD, as insurer of the first mortgage, determines that the project is proceeding in compliance with HUD-approved plans and specifications;

(ii) HUD will have the sole authority to resolve any significant disputes arising out of the inspection process and out of the disbursement of grant or loan proceeds;

(iii) The mortgagee will concurrently supply HUD and the governmental agency or instrumentality with copies of Form FHA 2448, Contractor's Requisition, and Form FHA 2403, Application for Insurance of Advances of Mortgage Proceeds;

(iv) The governmental agency or instrumentality will process the advance promptly and without adjustment;

(v) The governmental agency or instrumentality will receive a copy of the HUD-approved requisition for its records. Any adjustments required to the agency's or instrumentality's advance will be made in the following month;

(vi) [Reserved]

(vii) The governmental agency or instrumentality will render or cause to be rendered a legal opinion that the agreement referred to in this paragraph and the grant or loan commitment is legally binding on the present and all future administrations; and

(viii) The mortgagor shall post either a cash escrow or an unconditional irrevocable letter of credit equal to no less than 10 percent of the grant or loan proceeds. The escrow or letter of credit shall be held by the mortgagee and drawn upon in the event the governmental agency or instrumentality fails to advance the grant or loan proceeds in a timely manner. Control of the funds in this escrow will be set forth in a separate escrow agreement.

The mortgagee of record may not be the issuer of any letter of credit referred to in this paragraph without the prior written consent of the Commissioner. If a demand under a letter

of credit referred to in this paragraph is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance under the letter of credit.

(d) *Labor standards and prevailing wage requirements.* (1) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(3) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General under 29 CFR Part 5.

(4) No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(5) Compliance with the provisions of this subsection shall be evidenced at such time and in such manner as the Commissioner may prescribe.

(e) (1) *Rents and Charges—Applicability.* Paragraphs (e)(2), (e)(3), and (e)(4) of this section apply to mortgages insured before November 30, 1983. Paragraphs (e)(3) and (e)(4) also apply to projects described in paragraphs (e)(5) (iii) and (iv) of this section. Paragraphs (e)(5) and (e)(6) of this section apply to mortgages insured on or after November 30, 1983. Paragraphs (e)(7) and (e)(8) of this section apply to mortgages insured both before and on or after November 30, 1983. Paragraph (e)(9) of this section applies to certain mortgages for which the Commissioner will regulate the charges for accommodations (rents), facilities, and services because of the mortgagor's failure, as of December 1, 1987, to request the Commissioner's aproval to use the alternative formulae in paragraphs (e)(2)(ii) and (iii) of this section for setting project rentals.

(2) *Rents and charges—mortgages insured before November 30, 1983.* The mortgagor may make no charges for the accommodations (rents), facilities, or services offered by a project insured before November 30, 1983 in excess of those that the Commissioner authorizes. In authorizing these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The determination will be made as follows:

(i) *Initial rent determination.* The Commissioner will set initial rents in the project before it opens for occupancy, based upon:

(A) A debt service factor determined by the Commissioner to cover debt service requirements and a rate of return to the mortgagor, multiplied by the sum of the Replacement Cost and working capital;

(B) Estimated project operating costs, including an allowance for management, using the latest available data from comparable properties; and

(C) Such additional factors as the Commissioner considers appropriate,

such as local market conditions, vacancy rates, and use of commercial space.

(ii) *Rent adjustments.* After initial rents are determined, the Commissioner may approve rental adjustments in the amount provided in paragraph (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, at the option of the mortgagor:

(A) The sum of the most recent year's audited operating costs or, as appropriate, updated certified operating costs (taking into consideration reasonably anticipated increases in operating costs that will occur within 12 months of the anticipated effective date of the rent increase), and the amount derived under paragraph (e)(2)(i)(A) of this section; or

(B) The lesser of:

(*1*) The sum of the operating costs determined in accordance with paragraph (e)(2)(ii)(A) of this section and the amount derived by multiplying the debt service factor determined under paragraph (e)(2)(i)(A) of this section by the project's appraised market value as residential rental property at the time of the current application for rental adjustment; or

(*2*) Rents on comparable, conventionally financed projects in the same area, determined in accordance with procedures established by the Commissioner.

For purposes of paragraph (e)(2)(ii)(B)(*1*) of this section, the appraised market value shall be determined by a qualified real estate appraiser of the mortgagor's choice. The mortgagor must provide the information required under this paragraph (e) in a format required by HUD.

(iii) *Special Allocations.* Rent adjustments for projects with units assisted under Part 886 of this title (Section 8 Housing Assistance Payments Program—Special Allocations) shall be determined under paragraph (e)(2)(ii)(A) of this section, except that the mortgagor may, with HUD's prior approval, elect to have the rents determined under paragraph (e)(2)(ii)(B) of this section. However, if the mortgagor so elects, the rents for units occupied by assisted tenants shall be determined in accordance with the Housing Assistance Payments (HAP) contract, applicable regulations, and HUD's administrative instructions.

(3) *Effective date of rent adjustments—mortgages insured before November 30, 1983, and projects described in paragraphs (e)(5) (iii) and (iv) of this section.* Except for rents for projects described in paragraph (e)(2)(iii) of this section, no adjustment to maximum permissible rents may take effect before the end of 30 days after the mortgagor files the application for the adjustment with the appropriate HUD Field office. Rent adjustments are considered approved, unless the Commissioner disapproves them in writing. If the Commissioner does not approve the maximum permissible rents within this 30-day period, the mortgagor shall hold the additional rents received, as a result of the adjustment, in an escrow account under such terms as the Commissioner directs, or provide a letter of credit acceptable to the Commissioner sufficient to cover the additional rents collected, pending the Commissioner's approval or disapproval.

(4) *Refund of additional rents—mortgages insured before November 30, 1983, and projects described in paragraphs (e)(5) (iii) and (iv) of this section.* If the Commissioner disapproves all or part of the additional rents collected pursuant to paragraph (e)(3) of this section, the mortgagor shall promptly refund all disapproved amounts to the affected tenants.

(5) *Rents and charges—mortgages insured on or after November 30, 1983.* The mortgagor shall determine the charges for accommodations (rents), facilities, or services offered by a project insured on or after November 30, 1983, except as follows:

(i) For a project constructed for occupancy exclusively by elderly or handicapped tenants, the mortgagor may charge tenants for facilities or services offered by the project only as HUD's administrative instructions permit. The mortgagor may not charge for perpetual care or life care.

(ii) For units occupied by tenants assisted under a Section 8 HAP contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), Part 883 (Section 8 Housing Assistance

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Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title, the mortgagor may charge tenants for accommodations (rents), facilities, or services only as the HAP contract, applicable regulations, and HUD's administrative instructions permit. Rents for units occupied by assisted tenants may not exceed rents charged for comparable, unassisted units in the project without the prior approval of the Commissioner, and in no event may the mortgagor impose lesser charges for facilities or services on unassisted tenants than those imposed on assisted tenants.

(iii) The Commissioner will continue to approve rents for units in a project that are not occupied by tenants receiving Section 8 assistance if the mortgagor and the Commissioner determine that such approval is necessary for the project to comply with the requirements of the Internal Revenue Code or State law. If such a determination is made, the Commissioner will approve rents in the amount provided in paragraph (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, at the option of the mortgagor.

(iv) The Commissioner will approve rental adjustments, in the amount provided in paragraph (e)(2)(ii) (A) or (B) of this section, at the option of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(A) The firm commitment to insure the mortgagor under this part was issued before June 4, 1986.

(B) At the time that the mortgagor (or its predecessor in title) (*1*) obtained a firm commitment to insure the mortgage under this part, or (*2*) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(C) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

This paragraph (iv) shall not apply to any mortgage insured under this Part, the proceeds of which were used to refinance a mortgage insured under 24 CFR Part 220 or 221 for which the firm commitment to insure under such Part 220 or 221 was issued on or after June 1, 1983.

(6) *Reasonable and moderate rental charges—mortgages insured on or after November 30, 1983.* With respect to projects on which rents are deregulated as provided in paragraph (5) of this section, "reasonable" and "moderate" rental charges for purposes of section 207(b)(2) of the National Housing Act are determinable by reference to market rentals in the area.

(7) *Certain refinanced projects.* Rents on refinanced projects insured under section 207 of the National Housing Act pursuant to section 223(f) of that Act that have a Rent Supplement contract under Part 215 of this title, or that receive assistance under Part 236 of this title, shall be determined in accordance with § 221.530(a)(2) or § 236.55, as appropriate. The mortgagor may charge tenants for facilities or services offered by the project only as HUD's administrative instructions permit.

(8) *Rent control—all mortgages.* Any State or local law, ordinance, or regulation regulating the rents of projects subject to this section may be preempted only as provided in Part 246 of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in paragraph (e)(2)(ii)(A) of this section.

(9) *Regulation of charges for certain projects.* (i) The Commissioner will regulate, as provided in paragraph (e)(9)(ii) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(A) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agree-

ment to the project, under which the mortgagor could elect to determine the maximum project rents on the basis of the following formulae:

(*1*) The alternative formula contained in paragraph (e)(2)(ii) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(*2*) The alternative formula contained in paragraph (e)(2)(iii) of this section for mortgages insured before November 30, 1983, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations).

(B) (*1*) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title; or

(*2*) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based on tenant income data supplied to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to use the alternative formulae for determining project rentals under paragraph (e)(2) (ii) or (iii) of this section.

(ii) For projects that meet the criteria in paragraph (e)(9)(i) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approves in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approve these charges and later rent adjustments on the same basis and in the same manner they were approved immediately before June 1, 1983, except that mortgagors may use the forward-based budgeting provision in paragraph (e)(2)(ii)(A) of this section for purposes of determining project rentals.

(iii) Any mortgagor that is subject to this paragraph (e)(9) and that determined project rentals on the basis of the alternative formulae contained in paragraph (e)(2) (ii) or (iii) of this section must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (e)(9)(ii) of this section.

(f) *Methods of operation.*

(1) [Reserved]

(2) The mortgagor shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the Commissioner.

(3)(i) In all projects, except those involving rehabilitation where the mortgage does not exceed $200,000, a fund for replacements shall be established and maintained with the mortgagee. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(ii) For projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies), the replacement reserve provisions of the applicable Section 8 regulation, contained at §§ 880.602, 881.602 or § 883.703 respectively, shall apply; except that for partially-assisted Section 8 projects, as defined in Part 880, 881 or 883, whichever is applicable,

paragraph (f)(3)(i) of this section shall apply.

(4) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(5) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that so long as the mortgage is insured or held by the Commissioner the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner, and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The mortgagor shall file with the Commissioner and the mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(i) Monthly occupancy reports, when required by the Commissioner;

(ii) [Reserved]

(iii) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the Commissioner, certified to by an officer of the mortgagor and, when required by the Commissioner, prepared and certified by a Certified Public Accountant (or other person acceptable to the Commissioner), such reports to be submitted within sixty (60) days after the end of each fiscal year.

(iv) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage;

(v) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

(g) *Mortgagor's equity investment*—(1) *Amount and deposit.* Unless it can be established to the satisfaction of the Commissioner, prior to the final endorsement of the mortgage for insurance, that the mortgagor has an investment in the project, represented by cash expenditures, in an amount equal to 3 percent of the total cost of the project as certified by the mortgagor and approved by the Commissioner, there shall be deposited in a special fund an amount equal to the difference between such 3 percent and the amount of any such investment for necessary expenses incident to the completion of the project. Disbursements from any such fund, prior to three years from the date of the final or initial-final endorsement of the mortgage for insurance, may be made only with the prior written approval of the Commissioner.

(2) *Cutoff date.* The provisions of paragraph (g)(1) of this section shall be applicable only to those mortgages which have received final endorsement on or before November 15, 1962.

(h) *Advance amortization.* (1) If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result of the rental of the mortgaged property, such net income, to the extent determined by the Commissioner, shall be applied in one or more of the following ways:

(i) To advance amortization.

(ii) To offset the cost of approved capital improvements.

(iii) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement.

(2) The provisions of paragraph (h)(1) of this section shall be applicable to commitments issued on or after December 3, 1963, and to commitments outstanding on that date where the mortgage has not received final

endorsement. The provisions of paragraph (h)(1) of this section shall not be applicable to a project involving rehabilitation where the mortgage does not exceed $200,000.

(Approved by the Office of Management and Budget under control numbers 2502-0314 and 2502-0324)

[36 FR 24537, Dec. 22, 1971, as amended at 41 FR 41516, Sept. 22, 1976; 45 FR 50731, 50733, July 31, 1980; 48 FR 16673, Apr. 19, 1983; 48 FR 35391, Aug. 4, 1983; 48 FR 44070, Sept. 27, 1983; 49 FR 6715, Feb. 23, 1984; 49 FR 12215, Mar. 29, 1984; 49 FR 45126, Nov. 15, 1984; 51 FR 20270, June 4, 1986; 53 FR 15817, May 4, 1988]

§ 207.19a Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that: (1) Storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the insured mortgaged property shall have the responsibility for: (1) Insuring the components in the name of the mortgagor while in transit and storage; and (2) delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construc-

tion contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

[44 FR 8194, Feb. 8, 1979, as amended at 48 FR 15897, Apr. 13, 1983]

§ 207.20 Occupancy requirements.

(a) *Nondiscrimination against families with children.* Except in the case of a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons, the mortgagor shall certify under oath to the Commissioner that:

(1) In selecting tenants for the project covered by the mortgage, the mortgagor will not discriminate against any family by reason of the fact that there are children in the family; and

(2) The mortgagor will not sell the project while the mortgage insurance is in effect unless the purchaser also so certifies.

(b) *Transient or hotel purposes.* The mortgagor shall certify under oath that, so long as the mortgage is insured by the Commissioner, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean: (1) Rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service.

[36 FR 24573, Dec. 22, 1971, as amended at 49 FR 12697, Mar. 30, 1984]

§ 207.21 Racial discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

Eligible Mortgagees

§ 207.22 Qualification of lenders.

The provisions of §§ 203.1 to 203.4 and §§ 203.6 to 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Property Requirements

§ 207.23 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, an Indian, an Indian tribe, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must, at the time the mortgage is insured, be free and clear of all liens other than that of such mortgage, except that the property may be subject to an inferior lien made or held by a Federal, State or local governmental agency or instrumentality as provided in § 207.9(b).

[36 FR 24537, Dec. 22, 1971, as amended at 37 FR 1245, Jan. 27, 1972; 48 FR 35391, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984; 50 FR 4647, Feb. 1, 1985]

§ 207.24 Development of property.

(a) At the time the mortgage is insured, the mortgagor shall be obligat-

ed to construct and complete new housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Commissioner, and consist of not less than five rental dwelling units on one site. These units may be detached, semi-detached, or row houses, or multifamily structures. The Commissioner may also insure a mortgage on a completed project constructed pursuant to a Commitment to Insure upon Completion, or

(b) At the time the mortgage is insured, there shall be located on the mortgaged property a building or buildings that require substantial rehabilitation (as defined in paragraph (c) of this section) and, that upon completion of substantial rehabilitation, shall constitute a single project and provide housing accommodations designed principally for residential use, conform to standards satisfactory to the Commissioner, and contain at least five rental dwelling units so located in relation to one another as to effect a substantial improvement of housing standards and conditions in the neighborhood. In the case of both newly constructed and existing housing, the housing and improvements, if any, must not violate any material zoning or deed restriction applicable to the project site, and must comply with all applicable building and other government regulations. A project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

(c) "Substantial rehabilitation" consists of repairs, replacements, and improvements:

(1) The cost of which exceeds the greater of:

(i) 15 percent of the property's value after completion of all repairs, replacements and improvements, or

(ii) $6,500 per dwelling unit (adjusted by any high-cost area factor authorized in § 207.4(c), or

(2) That involve the replacement of more than one major building component. The term "major building component" includes roof structures; ceiling, wall, or floor structures; foundations; and plumbing heating, air conditioning; or electrical systems.

[51 FR 13141, Apr. 17, 1986]

Adjustment of Mortgage Amount

§ 207.25 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder.

(2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 207.26 Form of contract.

The form of contract between the mortgagor and builder shall be determined in accordance with the following.

(a) If it is established to the satisfaction of the Commissioner that neither the mortgagor nor any of the officers, directors, or stockholders of the mortgagor have any interest in the builder or contractor, there may be used a lump sum form of contract providing for payment of a specified amount.

(b) If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in the builder or contractor, the form of contract shall provide for payment of the actual cost of construction, not to

exceed an upset price and may provide for payment of a builder's fixed fee in addition thereto. The builder's fixed fee shall not exceed a reasonable allowance therefor as established by the Commissioner, in accordance with customary practices in the area.

(c) Where a cost plus form of contract is used, the mortgagor shall submit along with its certification of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(d) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner and it is determined by the Commissioner that an identity of interest exists between the general contractor and, any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 207.26a Disposition of general contractor's holdback.

In those cases in which a conditional commitment has been issued after March 4, 1977, and there is no identity of interest between the mortgagor and general contractor, the following provisions shall be applicable:

(a) The construction contract, whether it be lump sum or cost-plus, shall contain provisions whereby the mortgagor and contractor agree that the general contractor:

(1) Shall submit to the mortgagor, on a monthly basis, a requisition for payment equal to the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior payments made to the general contractor;

(2) Shall accept, for each and every requisition, 90 percent of the amount approved for payment, and shall agree that the remaining 10 percent shall be retained by the mortgagee to be deposited in an escrow account when the construction of the project has been substantially completed, with the exception of minor incomplete on-site construction items, and the following requirements have been met:

(i) All work under the construction contract, requiring inspection by municipal or other governmental authorities having jurisdiction, has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; (ii) all required certificates of occupancy or other approvals with respect to all units of the project, have been issued by State or local governmental authorities having jurisdiction, except that, in the event the mortgagor fails or refuses to file requests for issuance of such certificates this requirement will be satisfied upon the Commissioner's finding that such certificates or approvals would be forthcoming but for the mortgagor's failure to request their issuance; (iii) permissions to occupy for all units of the project have been issued by the Commissioner; and (iv) in the event a cost-plus form of contract has been used, that the mortgagee has been notified by the HUD field office that the mortgagor has filed the "Contractor's Certificate of Actual Cost" with the Commissioner, except that, if the mortgagor fails or refuses to file such a certificate within a reasonable time, the general contractor's direct submission of the certificate of actual cost may be

the basis for the HUD field office notification and the establishment of the escrow.

(3) Shall be entitled to the funds in the escrow account upon compliance with the terms of the Escrow Agreement which shall contain the conditions for release of the escrow account to the general contractor.

(b) The building loan agreement shall provide that:

(1) The mortgagor shall request monthly from the mortgagee an advance of mortgage proceeds for construction items in the amount of the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior advances;

(2) The mortgagor shall accept, for each and every advance, 90 percent of the amount of advance approved;

(3) The mortgagee shall retain the remaining 10 percent of each approved advance;

(4) The mortgagee shall transfer the 10 percent holdback for each advance, minus an amount that is one and one-half times the cost estimated by the Commissioner that is required for the completion of any minor incomplete on-site construction items, to an escrow account when the general contractor completes the construction as determined by the Commissioner and meets the requirements set forth in paragraphs (a)(2) (i), (ii) and (iii); and (a)(2) (i), (ii), (iii) and (iv) of this section for a general contractor who has executed a lump sum form of contract or cost-plus form of contract, respectively.

(5) The 10 percent holdback shall not be construed as an advance from mortgage proceeds by the mortgagee until the mortgagee places the funds in an escrow account in accordance with paragraph (b)(4) of this section; and

(6) The mortgagee and mortgagor agree that, notwithstanding the inclusion in the building loan agreement of the provisions contained in paragraphs (b) (1) through (5) of this section, the mortgagee is not required to make any advance of mortgage proceeds if the mortgagor is in default under the building loan agreement, other than the advance of the 10 percent holdback in accordance with paragraph (b)(4) of this section, and, except as altered by the provisions of this paragraph, the rights and obligations of the mortgagee and mortgagor under the building loan agreement shall not be affected.

(c) An Escrow Agreement shall be established for the purposes set forth in paragraphs (a) and (b) of this section and the depository under such agreement shall be either the mortgagee or a party designated by the mortgagee. The agreement shall contain provisions for the release of the escrow fund which shall include the requirement that the general contractor submit its certificate of actual cost for approval by the Commissioner and that the certificate be approved by the Commissioner before the contractor shall be entitled to the fund. If the mortgagor and general contractor have entered into a lump sum contract, the requirement for the certificate of actual cost shall not be applicable. The Escrow Agreement shall provide that the depository will:

(1) Release the funds upon request of the general contractor and approval of the Commissioner;

(2) Invest the funds in an interest bearing account, if the mortgagor and general contractor have so agreed, which interest shall be paid to the general contractor when the escrowed funds are released to the general contractor:

(3) Release to the general contractor only that portion of the escrowed funds which do not exceed the amount of costs approved by the Commissioner on the "Contractor's Certificate of Actual Cost", or, in the case of a general contractor which has entered into a lump sum contract, an amount, which when added to payments already received, does not exceed the amount of the lump sum contract. In the event the contractor has not completed construction of the project within the time provided in the construction contract, there shall be deducted from the escrow fund an amount which the Commissioner determines equals the liquidated dam-

ages as provided in the construction contract.

(4) Disburse any remaining amount in the escrow fund in accordance with the terms of the escrow agreement; and

(d) The mortgagee's request for approval by the Commissioner of an advance for construction items shall contain a provision that such approval by the Commissioner shall constitute approval for mortgage insurance of the 10 percent holdback retained by the mortgagee when the retained funds are placed in an escrow account in accordance with this section. The mortgage insurance on the funds retained by the mortgagee shall be effective on the date the funds are transferred to the escrow account.

(e) For the purposes of this section, "substantial completion" shall mean that the Commissioner has issued a final inspection report and that the Commissioner has determined that the contractor has completed the project in accordance with the terms of the construction contract.

[42 FR 764, Jan. 4, 1977; 42 FR 2954, Jan. 14, 1977]

§ 207.27 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of a transaction under § 207.32a, where the commitment provides for completion of specified repairs after endorsement as provided in § 207.32a(a), a supplemental certificate of actual cost will be submitted covering any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, or partners, of:

(1) The construction contract, where the mortgagor and the general contractor are separate entities, or the construction of the project where the mortgagor is the general contractor and there is no such contract. In the case of a lump sum contract, the amount shown in the certificate shall include all payments under the contract;

(2) In the case of a cost-plus-fixed-fee contract or where the mortgagor is the general contractor, the amount shown in the certificate shall include such allowance of general overhead items as are acceptable to the Commissioner plus a reasonable allowance for the builder's profit as established by the Commissioner;

(3) Architect's fee;

(4) Off-site public utilities and streets not included in the general contract;

(5) Organizational and legal work; and

(6) Other items of expense approved by the Commissioner.

(b) A builder receiving a fixed fee under a cost plus contract shall certify in a form prescribed by the Commissioner as to all actual cost paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fixed fee less any kickbacks, rebates, trade discounts, or other similar payments to the builder or mortgagor or any of its officers, directors or stockholders.

(c) The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(d) The Certificate of Actual Cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0044)

[36 FR 24537, Dec. 22, 1971, as amended at 49 FR 27491, July 5, 1984; 50 FR 25940, June 24, 1985; 51 FR 13141, Apr. 17, 1986]

§ 207.28 Adjustment resulting from cost certification.

Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimated of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements. If the principal obligation of the mortgage exceeds the applicable statutory percentage of this total amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 207.29 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with either paragraph (a) or paragraph (b) of § 207.27 and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or 90 percent of the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the applicable statutory percentage of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

§ 207.30 Requisites of agreement and certification.

(a) Any agreement, undertaking, statement or certification required by § 207.27 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

(b) Upon the Commissioner's approval of the mortgagor's certification as required by § 207.27 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

Other Eligible Mortgages

§ 207.31 Eligibility of miscellaneous type mortgages.

(a) A mortgage covering five or more rental units and which meets the requirements of this subpart, except as modified by this section shall be eligible for insurance under this subpart.

(b) The mortgage may be accepted for insurance if:

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any hous-

ing acquired or constructed under Pub. L. 849, Seventy-sixth Congress, as amended; Pub. L. 781, Seventy-sixth Congress, as amended; or Pub. L. 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, of any housing (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Pub. L. 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or any agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the occupancy of veterans (as defined in § 203.12) their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this paragraph exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (b) (1), (2), (3), and (4) of this section.

(c) For the purposes of this section, an eligible mortgagor is defined as a person or legal entity acceptable to the Commissioner. Such a mortgagor may, in the discretion of the Commissioner, be (1) uncontrolled or (2) controlled in such degree and manner as the Commissioner may find desirable under the circumstances.

§ 207.31a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A Mortgage financing the repair, rehabilitation or construction of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages) as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located pre-

vent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of low and moderate income.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 207.31b Eligibility of mortgages covering housing near military installations.

(a) A mortgage financing the construction, repair or rehabilitation of property located near any installation of the United States Armed Forces in a federally impacted area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all the requirements of this subpart, except that the property or project does not have to be economically sound or constitute an acceptable risk if:

(1) The Secretary finds that the benefits to be derived from such use of the property outweigh the risk of probable cost to the Government, and

(2) The Secretary of Defense certifies that there is no intention to curtail substantially the personnel assigned or to be assigned to such installation.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 238(c) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

[42 FR 59674, Nov. 18, 1977]

§ 207.32 Eligibility of refinancing transactions.

A mortgage given to refinance an existing insured mortgage covering five or more rental units may be insured under this subpart pursuant to section 223(a)(7) of the Act. The new mortgage shall be limited in amount and in term as follows:

(a) Except as provided in paragraph (b), the principal of the new mortgage shall not exceed the lowest of these amounts:

(1) The original principal amount of the existing insured mortgage.

(2) The unpaid principal amount of the existing insured mortgage, to which may be added:

(i) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(ii) The costs, as determined by the Commissioner, of capital improvements, upgrading or additions required to be made to the property.

(iii) Loan closing charges.

(3) 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(b) Where the mortgage to be refinanced is one of several insured mortgages covering properties which are part of a single development and the proceeds of the refinanced mortgage are to be applied to the delinquent indebtedness of one or more of the insured mortgages in such development, the principal amount of the new mortgage shall not exceed the original principal amount of the existing insured mortgage. For purposes of this paragraph, single development shall mean adjacent properties owned by the same mortgagor or an affiliate mortgagor, as determined by the Commissioner.

(c) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

(d) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

[36 FR 24537, Dec. 22, 1971, as amended at 53 FR 8882, Mar. 18, 1988]

§ 207.32a Eligibility of mortgages on existing projects.

Notwithstanding the generally applicable requirement that mortgages insured under this subpart be limited to projects to be constructed or substantially rehabilitated after commitment for mortgage insurance, a mortgage executed in connection with the purchase or refinancing of an existing multifamily housing project containing five or more units may be insured under this subpart pursuant to section 223(f) of the National Housing Act. A mortgage insured pursuant to this section shall meet all other requirements of this subpart except as modified by this section and shall be limited as to amount, terms, and conditions for insurance as follows:

(a) *Application, commitment, and required fees*—(1) *Application.* An application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD office on an FHA approved form. No application shall be considered unless accompanied by the exhibits required by the form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of any improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

(2) *Application fee—conditional commitment.* An application-commitment fee of $2 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(3) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of $3 per thousand dollars of the requested mortgage amount to be insured less the amount of any fee previously received for a conditional commitment.

(4) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee may be charged by the Commission. A fee of $30 per dwelling unit will be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of the repairs.

(b) *Maximum mortgage amounts—general.* In addition to the limitations in paragraphs (c) and (d) of this section, a mortgage may not involve a principal obligation in excess of the lesser of the following:

(1) 85 percent of the Commissioner's estimate of the value of the project, except that—

(i) With respect to a cooperative project, a mortgage may not involve a principal obligation in excess of 90 percent of the Commissioner's appraised value of the project for continued use as a cooperative and

(ii) With respect to a project that meets the eligibility requirements of paragraph (k) or paragraph (l) of this section, a mortgage may not involve a principal obligation in excess of 90 percent of the Commissioner's estimate of the value of the project; or

(2)(i) The total of the amounts per family dwelling unit (excluding exterior land improvements, as defined by the Commissioner) depending on the number of bedrooms, which may be:

(A) $25,350 without a bedroom.
(B) $28,080 with one bedroom.
(C) $33,540 with two bedrooms.
(D) $41,340 with three bedrooms.
(E) $46,800 with four or more bedrooms.

(ii) *Increased mortgage amount—elevator type structure.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraph (b)(2)(i) of this section, to not to exceed:

(A) $29,250 without a bedroom.
(B) $32,760 with one bedroom.
(C) $40,170 with two bedrooms.

(D) $50,310 with three bedrooms.

(E) $56,885 with four or more bedrooms.

(iii) *Increased mortgage amounts—high-cost areas.* (A) The Commissioner may increase the dollar amount limitations in paragraphs (b)(2)(i) and (b)(2)(ii) of this section—

(*1*) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require, and

(*2*) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(B) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii, it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased by such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high-cost area increases, if any, otherwise applicable by more than one-half thereof.

(c) *Maximum mortgage amounts—property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum mortgage amount shall not exceed 85 percent (90 percent for a cooperative project or a project that meets the eligibility requirements contained in paragraph (k) or paragraph (l) of this section) of the cost of acquisition as determined by the Commissioner. The cost of acquisition shall consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(1) Purchase price as indicated in the purchase agreement;

(2) An amount for the initial deposit to the Reserve Fund for Replacements;

(3) Reasonable and customary legal, organization, title and recording expenses, cooperative marketing fees, and allowable fees including discounts charged by the mortgagee;

(4) The estimated repair cost, if any; and

(5) Architect's, municipal inspection and engineering fees.

(d) *Maximum mortgage amounts-property to be refinanced.* If property is to be refinanced by the insured mortgage without a change of ownership, or if property is sold to a purchaser who has an identity of interest with the seller and the purchase is to be financed with the insured mortgage, then the maximum mortgage amount shall not exceed:

(1) In the case of a rental project, the greater of—

(i) 70 percent of the Commissioner's estimate of value of the property; or

(ii) The cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(A) The amount required to pay off the existing indebtedness;

(B) The amount of the initial deposit for the reserve fund for replacements;

(C) Reasonable and customary legal, organizational, title, and recording expenses, and fees including discounts charged by the mortgagee;

(D) The estimated repair costs, if any;

(E) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(2) In the case of a cooperative project, the cost to refinance the existing indebtedness as defined in paragraph (d)(1)(ii) of this section.

(e) *Maturity and prepayment.* (1) The term of the mortgage shall not be less than 10 years, nor shall it exceed the lesser of 35 years (40 years if the project meets the eligibility requirements contained in paragraph (k) or paragraph (l) of this section) or 75

percent of the estimated remaining economic life of the physical improvements (100 percent if the project meets the eligibility requirements contained in paragraph (l) of this section). The term of the mortgage shall begin on the first day of the second month following the date of initial final endorsement of the mortgage for insurance.

(2) Where the commitment for mortgage insurance was issued after October 8, 1980, prepayment of the mortgage indebtedness is prohibited, except as required by the Commissioner, for a period of five years from the date of endorsement of the mortgage (or for a period of twenty years where the mortgage was purchased by the Government National Mortgage Association under Chapter II of Subtitle B of Title 24) except where, at the time of prepayment:

(i) The mortgagor has entered into an agreement with the Commissioner to maintain the property as rental housing for the remainder of the specified five-year (or twenty-year) period;

(ii) The Commissioner has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(iii) The Commissioner has determined that continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low-and moderate-income people in the community; or

(iv) The Commissioner has determined that continuation of the property as rental housing would have an undesirable and deleterious effect on the surrounding neighborhood.

(f)(1) *Eligible property.* A mortgage given to purchase or refinance an existing project shall be eligible for insurance if the project contains at least five dwelling units. The project shall have attained sustaining occupancy (occupancy that would produce rental income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements), as determined by the Commissioner, before endorsement of the mortgage for insurance, or the mortgagor shall provide an operating deficit fund at the time of endorsement for insurance, in an amount and under an agreement approved by the Commissioner.

(2) A property is eligible for mortgage insurance under this section if:

(i) The cost of repairs, replacements, and improvements does not exceed the greater of:

(A) 15 percent of the property's value after completion of all repairs, replacements, and improvements, or

(B) $6,500 per dwelling unit (adjusted by any applicable high-cost area factor authorized in paragraph (b)(2)(ii) of this section) or in the case of any purchase or refinancing involving property to be rehabilitated under Part 511 or Part 850 of this title, $2,000 per dwelling unit, except that the Commissioner may increase this amount by not to exceed 25 percent for specific properties where the Commissioner determines that cost levels so require, and

(ii) No more than one major building component is being replaced. The term "major building component" includes roof structures; ceiling, wall or floor structures; foundations; and plumbing, heating, air conditioning, or electrical systems.

(4) [Reserved]

(5) Before filing an application for mortgage insurance, the project, except one which meets the requirements of paragraph (k) of this section, must have been fully completed and at least three years must have elapsed from the date of completion or initial occupancy, as determined by the Commissioner, whichever is later.

(g) *Eligible property in older declining urban areas and cooperative projects.* In addition to meeting the requirement in paragraph (f)(5) and other applicable requirements of this section, the maximum mortgage amount for an existing project to be purchased or refinanced in an older, declining urban area, or for a cooperative project, shall be limited by the lowest of paragraph (b)(1), (b)(2), (c) or (d)(2) of this section.

(h) *Occupancy requirements.* (1) The mortgagor shall certify under oath to the Commissioner that as long as the Commissioner is the insurer, holder or

reinsurer of the mortgage, the mortgagor will not use tenant selection procedures that discriminate against families with children, unless the project was specifically designed for housing the elderly or handicapped.

(2) With respect to a cooperative project, at least 70 percent of the total units in the project must be subscribed to on a cooperative basis before endorsement of the mortgage for insurance by the Commissioner.

(i) *Labor standards and prevailing wage requirements.* Except in the case of properties eligible under this section where the cost of repairs, replacements, and improvements exceeds $6,500 per dwelling unit (adjusted by any applicable high-cost area factor), the requirements of § 207.19(d), (1), (4), and (5) shall not apply to mortgages insured under commitments issued in accordance with this section.

(j) *Secondary financing.* (1) Except as provided in paragraphs (j)(5) and (j)(6) of this section, when a loan is made to finance the purchase of an existing multifamily housing project, the mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

(i) Seven and one-half percent (7½%) of the Commissioner's estimate of value, or

(ii) Seven and one-half percent (7½%) of the cost of acquisition as defined in paragraph (c) of this section.

(2) Except as provided in paragraph (j)(5) of this section, when a loan is made to refinance an existing multifamily housing project, the mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

(i) Seven and one-half percent (7½%) of the Commissioner's estimate of value, or

(ii) Fifty percent of the difference between the cost to refinance as defined in paragraph (d)(2) of this section and the maximum mortgage amount as determined by the Commissioner.

(3) The additional obligations, if any, provided for in paragraphs (j) (1), (2), and (5) of this section shall be represented by promissory notes on a form approved by the Commissioner. Such notes shall not be due and payable until the maturity date of the mortgage to be insured under this section, but may be prepaid from surplus cash as that term is defined in § 207.19(b) and in accordance with the conditions prescribed in the Regulatory Agreement between the mortgagor and the Commissioner.

(4) For those projects that meet the eligibility requirements contained in paragraph (k) or paragraph (l) of this section, but do not meet the requirements of paragraph (j)(5) of this section, any additional obligations on the project in connection with the insured transaction shall be in an amount approved by the Commissioner and represented by such credit and security instruments as are approved by the Commissioner. In the case of projects that meet the eligibility requirements contained in paragraph (l) of this section, but do not meet the requirements of paragraph (j)(5) of this section, the additional obligations shall in no event exceed:

(i) When a loan is made to finance the purchase of an existing multifamily housing project and the interest rate of the additional obligations does not exceed the current maximum interest rate permitted under § 207.7, the difference between the amount of the insured mortgage and the lesser of 95 percent of the Commissioner's estimate of value or 95 percent of the cost of acquisition as defined in paragraph (c) of this section.

(ii) When a loan is made to finance the purchase of an existing multifamily housing project, and the interest rate of the additional obligations exceeds the current maximum interest rate permitted under § 207.7, the lesser of:

(A) Five percent of the Commissioner's estimate of value, or

(B) Five percent of the cost of acquisition as defined in paragraph (c) of this section.

(iii) When a loan is made to refinance an existing multifamily housing project and the interest rate of the additional obligations does not exceed the current maximum interest rate permitted under § 207.7, the lesser of:

(A) The difference between the amount of the insured mortgage and

95 percent of the Commissioner's estimate of value, or

(B) The difference between the amount of the insured mortgage and the cost to refinance as defined in paragraph (d)(2) of this section.

(iv) When a loan is made to refinance an existing multifamily housing project, and the interest rate of the additional obligations exceeds the current maximum interest rate permitted under § 207.7, the lesser of:

(A) Five percent of the Commissioner's estimate of value, or

(B) Fifty percent of the difference between the cost to refinance as defined in paragraph (d)(2) of this section and the maximum mortgage amount as determined by the Commissioner."

(5) In the case of any purchase of refinancing involving property to be rehabilitated under Part 511 or Part 850 of this title, additional obligations in connection with the transaction may include subordinated liens securing up to the full amount of mortgage financing provided by State or local governments or agencies thereof, where the Commissioner determines that the mortgagor is also contributing, out of its own resources (as defined by the Commissioner), an amount equal to the following: (i) in the case of a purchase, at least 7½ percent of the Commissioner's estimate of the value of the project or (ii) in the case of a refinancing, such higher percentage of the Commissioner's estimate of the value of the project as the Commissioner may determine:

(6) The limitations on secondary financing described in this paragraph (j) do not apply to loans taken by individual cooperative members to finance or refinance "share" or "membership" purchases or unit transfers.

(k) *Additional eligibility requirements for a mortgage refinancing a project financed with State or local assistance.* Projects which were constructed through State or local assistance shall be entitled to the benefits of the special eligibility provisions contained in paragraphs (b) and (c) of this section, and of the 40-year maximum term provision contained in paragraph (e) of this section, by meeting the following additional requirements:

(1) Construction of the project must have commenced before December 31, 1975, and the project shall have been fully completed prior to January 1, 1979, and after completion of the project, an application for insurance shall have been filed prior to January 1, 1979.

(2) The project shall have been constructed under a State or local program providing assistance through loans, loan insurance or tax abatement, which form of assistance shall be approved by the Commissioner. Multifamily projects covered by a Housing Assistance Payment contract under Section 8 shall not be eligible for mortgage insurance under this subsection. This prohibition shall not apply to multifamily projects with individual tenants receiving assistance under the Section 8 Existing Housing Program.

(3) The mortgage which is to be insured on the project is part of a portfolio of mortgages, all of which have been approved for mortgage insurance by the Commissioner. The Commissioner, by agreement with the State or local government, or agency thereof, shall determine the size and amount of an eligible portfolio, and the conditions under which the portfolio may be increased or decreased, including the conditions under which the portfolio may be increased after a claim for insurance benefits has been paid by the Commissioner.

(4) The Commissioner has entered into an agreement with a State or local government, or agency thereof, pursuant to a State or local program, whereby the State has appropriated money, or money will be made available through other sources approved by the Commissioner, which shall be placed in a special fund to be used to reimburse the Commissioner in an amount not less than one-half of the insurance claims which the Commissioner pays on defaulted mortgages within all approved portfolios: *Provided, however,* That such payments shall continue until the total amount paid by the State or local government, or agency thereof, to the Commissioner on each approved portfolio equals a specified percentage of each such portfolio, as approved by the Commission-

er, but in no event less than 5 percent of the outstanding principal balances of the mortgages in an approved portfolio and the mortgages removed from the portfolio through the payment of insurance claims. For the purpose of this paragraph, "outstanding principal balance" due on a mortgage shall be that amount which would be due according to the amortization schedule without taking into account prepayments or delinquencies. The payments to the Commissioner by the State or local government, or agency thereof, shall commence on the date of the first claim paid by the Commissioner on a mortgage in a portfolio and shall continue on each and every claim paid thereafter until the State or local government, or agency thereof, has reached the maximum payment set forth in the agreement. The State or local government, or agency thereof, shall agree that the special fund established to reimburse the Commissioner for payment of claims shall remain in existence until payments to the Commissioner have reached the maximum amount specified in the agreement. The agreement shall also contain assurances by the State or local government, or agency thereof, that State law provides that:

(i) The projects securing the mortgages in each portfolio shall not be subject to rent controls by the State, or a political subdivision thereof, or by any authority regulating rents pursuant to State or local law, and

(ii) Any tax abatement or exemption in effect, or established, at the time of application for mortgage insurance shall continue so long as the mortgage is insured or held by the Commissioner, or the project is owned by the Commissioner.

(5) For those projects in which the owner has entered into a contract with the Commissioner for interest reduction payments pursuant to the proviso in section 236(b) of the National Housing Act, the parties must agree to the modification of the interest reduction contract to reflect changes necessitated by insurance of a mortgage on the project pursuant to this section.

(6) For those projects in which the mortgagor is a nonprofit cooperative ownership housing corporation or nonprofit cooperative ownership housing trust, the permanent occupancy of the dwellings of which is restricted to members of such corporation or to beneficiaries of such trust, the mortgagor must be regulated or supervised under State laws or by political subdivisions of States, or agencies thereof. For projects which meet this requirement, the term "tenant" as used in this subpart shall mean a member of a cooperative, the term "rental charge" shall mean the charges under the occupancy agreement of members of the cooperative, and the term "rental unit" shall mean "dwelling unit."

(7) The total amount of loans insured pursuant to this section shall not exceed one and one-half billion dollars.

(l) *Additional eligibility requirements for a mortgage financing a project in a Target Preservation Area.* Projects in areas that the Secretary shall hereafter designate as Target Preservation Areas, shall be entitled to the benefits of the special eligibility provisions contained in paragraphs (b), (c) and (e) of this section. In order for an area to be designated as a Target Preservation Area, the Secretary must determine that:

(1) The area either is an older, declining urban area, or was an older, declining urban area before the concentrated activities described in paragraph (l)(2) of this section began;

(2) Concentrated housing, physical development or public service activities are being or are to be carried out in the area in a coordinated manner to serve a common objective or purpose pursuant to a locally developed plan or strategy for neighborhood improvement, conservation or preservation;

(3) The area has unique qualities that make it suitable for inclusion as one of the demonstration areas in the Target Area Preservation Demonstration Program.

The Target Area Preservation Demonstration Program makes section 223(f) financing available on a limited, carefully controlled demonstration basis to areas that meet the requirements given above, and such additional Target Preservation Area eligibility criteria as the Secretary may an-

nounce in the future. The objective of the Target Area Preservation Demonstration Program is to test the feasibility of mortgage insurance in upgrading and maintaining older, declining urban areas and multifamily rental housing in these areas. An area approved as a Neighborhood Strategy Area under the provisions of 24 CFR Part 881, Subpart C, shall be considered to have met the criteria in paragraphs (l) (1) and (2) of this section.

(m) *Additional eligibility requirements for cooperative projects.* For those projects in which the mortgagor is a nonprofit cooperative ownership housing corporation, the mortgagor must require membership eligibility and transfer of membership in the cooperative in a manner approved by the Commissioner:

(1) The mortgagor must be regulated or supervised under State laws or by a political subdivision of a State, or agencies thereof;

(2) A General Operating Reserve must be established and maintained, in accordance with standards established by the Commissioner, throughout the period that the mortgage insurance is in force; and

(3) In the case of the conversion of a property to cooperative ownership, the mortgage will be accepted for insurance only where the Commissioner determines that:

(i) The conversion of the property to cooperative ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(ii) Continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low and moderate income people in the community; or

(iii) Continuation of the property as rental housing would have an undesireable and deleterious effect on the surrounding neighborhood.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0029)

[40 FR 43899, Sept. 24, 1975]

EDITORIAL NOTE: For additional FEDERAL REGISTER citations to § 207.32a, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 207.33 Eligibility of mortgages on manufactured home courts or parks.

(a) All of the provisions of this subpart shall apply to insurance on manufactured home courts or parks, except as provided in this section. All references in this subpart to housing for rent or sale shall mean the rental of spaces for the accommodation of manufactured homes, and such appurtenances thereto as may have been approved by the Commissioner.

(b) A mortgage on a manufactured home park may involve a principal obligation in an amount to be determined as follows:

(1) An amount not exceeding the lesser of $9,000 per space (as defined by the Commissioner), or 90 percent of the estimated value of the property after the improvements are completed.

(2) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraph (b)(1) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

(3) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct manufactured home courts or parks without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this paragraph, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases otherwise applicable, by more than one-half thereof.

(c) A mortgage on a manufactured home court or park is not subject to the provisions of § 207.4, except that the provisions of § 207.4(e) (relating to a reduction in mortgage amount where the mortgage is on a leasehold estate) and the provisions of § 207.4(f) (relating to loans to cover 2-year operating losses) shall be applicable.

(d) A mortgage on a leasehold estate shall be eligible for insurance only if the real estate is held:

(1) On the interest of the lessee under a lease for not less than 99 years which is renewable; or

(2) Under a lease having a period of not less than 50 years to run from the date the mortgage is executed.

(e) [Reserved]

(f) A mortgage on a manufactured home court or park shall have a term not in excess of 20 years from the date of insurance, except that such mortgage may have a longer term, not in excess of 40 years, if the Commissioner determines that the location of the project is not inconsistent with comprehensive planning for the area where such planning exists, or can reasonably be expected to be consistent with desirable growth patterns in the foreseeable future.

(g) [Reserved]

(h) At the time a mortgage is insured on a manufactured home court or park, the mortgagor shall have constructed and completed, or shall have rehabilitated and completed, pursuant to a commitment to insure upon completion, or shall be obligated to construct and complete, or to rehabilitate and complete pursuant to a commitment to insure advances, such court or park, designed principally for rental use for manufactured homes, and conforming to standards, specifications, plans and requirements satisfactory to the Commissioner.

(i) The references in §§ 207.25 to 207.29 to "statutory limitation" and "statutory percentage" shall mean the ratio of loan to value limitation set forth in paragraph (b) of this section.

[36 FR 24537, Dec. 22, 1971, as amended at 39 FR 32435, Sept. 6, 1974; 48 FR 16668, Apr. 19, 1983; 48 FR 40711, Sept. 9, 1983]

§ 207.34 Reinsurance of Commissioner-held mortgages.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under any section or title of the Act.

TITLE

§ 207.35 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 207.36 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a)(1) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a) (2), (3), or (4) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project involving rehabilitation where the mortgage does not exceed $200,000.

EXTENSION OF TIME

§ 207.36a Actions by Commissioner.

Where the mortgagee or lender has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 207.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

AUDIT REQUIREMENTS

§ 207.250 Audit requirements for State and local governments as mortgagees.

Since the insuring of mortgage notes or other evidence of indebtedness under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in 24 CFR Part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

[50 FR 39090, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986]

Subpart B—Contract Rights and Obligations

§ 207.251 Definitions.

As used in this subpart:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act, as amended.

(c) The term "mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) The term "contract of insurance" means the agreement evidenced by such endorsement and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) The term "mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term "mortgagee" means the original lender under a mortgage its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

PREMIUMS

§ 207.252 First, second and third premiums.

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of:

(1) One percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) One percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(d) Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(e) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(f) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart.

§ 207.252a Premiums—operating loss loans.

(a) The mortgagee, upon the insurance endorsement of the increase loan credit instrument covering the operating loss loan, shall pay to the Commissioner a first mortgage insurance premium of one-half of 1 percent of the original amount of the loan.

(b) The provisions of paragraphs (d), (e), and (f) of § 207.252 shall apply to operating loss loans.

§ 207.252b Premiums—mortgages insured pursuant to section 223(f) of the Act.

(a) The mortgagee, upon the initial-final endorsement of the mortgage for insurance pursuant to a Commitment to Insure Upon Completion issued in accordance with § 207.32a, shall pay to the Commissioner a first mortgage insurance premium equal to one percent of the original face amount of the mortgage.

(b) The mortgagee, on the date of the first principal payment, shall pay a second premium equal to one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted as of that date so that the aggregate of the first and second premiums shall equal the sum of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(c) The provisions of paragraphs (d), (e) and (f) of § 207.252 shall apply to mortgages insured pursuant to section 223(f) of the Act.

[40 FR 10177, Mar. 5, 1975]

§ 207.252c Premiums—mortgages insured pursuant to section 238(c) of the Act.

All of the provisions of §§ 207.252 and 207.252a governing mortgage insurance premiums shall apply to mortgages insured under this subpart pursuant to section 238(c) of the Act except that all mortgage insurance premiums due on such mortgages in accordance with §§ 207.252 and 207.252a shall be calculated on the basis of one percent.

[42 FR 59674, Nov. 18, 1977]

§ 207.252d Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978. Correctly designated at 44 FR 23067, Apr. 18, 1979]

§ 207.253 Termination by prepayment and voluntary termination.

All rights under the insurance contract and all obligations to pay future insurance premiums shall terminate on the following conditions:

(a) *Termination by prepayment.* Notice of the prepayment in full of the mortgage or loan shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of prepayment. The insurance contract shall terminate, effective as of the date of prepayment. No adjusted premium charge shall be due the Commissioner on account of such termination by prepayment.

(b) *Termination by voluntary agreement.* Receipt by the Commissioner of a written request, by the mortgagor and mortgagee or lender for termination of the insurance on the mortgage or loan, on a form prescribed by the Commissioner, accompanied by the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met. No voluntary termination charge shall be due the Commissioner on account of such termination by voluntary agreement.

(c) Upon termination of the mortgage or loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the mortgagee or lender for the account of the mortgagor or borrower an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to (1) the date of the prepayment or (2) the effective date of the voluntary termination of the contract of insurance.

(d) Notwithstanding any provision in the mortgage instrument, this section

shall apply to all mortgage or loan insurance contracts terminated by either prepayment or voluntary termination where: (1) The mortgage is prepaid in full or (2) the Commissioner receives a request for voluntary termination, on or after May 1, 1972.

[37 FR 8662, Apr. 29, 1972]

§ 207.253a Termination of insurance contract.

(a) *Reason for termination.* The happening of any of the following events shall constitute an additional reason for terminating the contract of insurance in cases where the mortgagee has elected to convey the property to the Commissioner:

(1) The acquisition by the mortgagee of the mortgaged property without conveying it to the Commissioner.

(2) The acquisition of the property at the foreclosure sale by a party other than the mortgagee.

(3) The redemption of the property after foreclosure.

(4) Notice given by the mortgagee after the foreclosure and during the redemption period that it will not tender the property to the Commissioner.

(b) *Notice of termination.* No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 30 days from the happening of any one of the events set forth in paragraph (a) of this section.

(c) *Effective termination date.* The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination shall be effective as of the date any one of the events set forth in paragraph (a) of this section occur.

(d) *Effect of termination.* Upon termination of the contract of insurance the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated.

[36 FR 24537, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

Insurance Endorsement

§ 207.254 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he shall indicate on the original credit instrument the total of all advances he has approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the mortgagee or lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

Rights and Duties of Mortgagee Under the Contract of Insurance

§ 207.255 Defaults.

(a) The following shall be considered a default under the terms of a mortgage insured under this subpart:

(1) Failure of the mortgagor to make any payment due under the mortgage; or

(2) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(b) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(d) For the purposes of this section the date of default shall be considered as:

(1) The date of the first uncorrected failure to perform a covenant or obligation; or

(2) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 207.256 Notice.

(a) If the default as defined in § 207.255 is not cured within the 30 days grace period, the mortgage shall within 30 days thereafter notify the Commissioner in writing of such default.

(b) Notwithstanding the provision of § 207.255(a)(2), the mortgagee will be required to give notice in writing to the Commissioner of the failure of the mortgagor to comply with such covenant regardless of the fact the mortgagee may not have elected to accelerate the debt.

[36 FR 24537, Dec. 22, 1971, as amended at 39 FR 5767, Feb. 15, 1974]

§ 207.256a Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred, provided the mortgagee gives written notice of reinstatement to the Commissioner.

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement which extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, it will hold in trust for disposition as directed by the Commissioner all rents or other funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a convenant, as provided for in § 207.256(b), or otherwise being appraised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), it shall, within 45 days thereafter, give the Commissioner written notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section.

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, it shall, at any time within 30 days after the date of the notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's re-

quest that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the morgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner. The following requirements shall also be met by the morgagee:

(1) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee shall notify the Commissioner on a form prescribed by him of such assignment, and shall also notify the FHA Assistant Commissioner-Comptroller by telegram of such recordation.

(2) *Warranty of mortgagee.* The assignment shall be made without recourse or warranty, except that the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity and priority of the mortgage.

(ii) The mortgage is prior to all mechanics' and materialmen's liens filed on record subsequent to the recording of the mortgage, regardless of whether such liens attached prior to the recording date.

(iii) The mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the mortgage, except such liens or other matters as may be approved by the Commissioner.

(iv) The amount stated in the instrument of assignment is actually due under the mortgage and there are no offsets or counterclaims against such amount.

(v) The mortgagee has a good right to assign the mortgage.

(3) *Chattel lien warranty.* In assigning its security interest in chattels, including materials, located on the premises covered by the mortgage, or its security interest in building components stored either on-site or off-site at the time of the assignment, the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity or priority of the lien created by the chattel security instruments; and

(ii) The mortgagee has a good right to assign the security instruments; and

(iii) The chattel security instruments are a first lien on the items covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(4) *Items delivered by mortgagee.* The mortgagee shall deliver to the Commissioner, within 45 days after the assignment is filed for record, the items enumerated below:

(i) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(ii) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the effective date of the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

(iii) All records, ledger cards, documents, books, papers, and accounts relating to the mortgage transaction.

(iv) All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee) pursuant to paragraph (b)(5) of this section.

(v) Any additional information or data which the Commissioner may require.

(5) *Disposition of cash items.* The following cash items shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner at the time the insurance claim is filed:

(i) Any balance of the mortgage loan not advanced to the mortgagor.

(ii) Any cash held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness.

(iii) All funds held by the mortgagee for the account of the mortgagor received pursuant to any other agreement.

(iv) The amount of any undrawn balance under a letter of credit used in lieu of a cash deposit.

(c) *Conveyance of title to Commissioner.* If the mortgagee elects to acquire and convey title to the Commissioner, the following requirements shall be met:

(1) *Alternative actions by mortgagee.* At any time within a period of 30 days after the date of the notice of such election, the mortgagee shall take one of the alternative actions in paragraph (c) (2) or (3) of this section.

(2) *Foreclosure of mortgage.* The mortgagee may elect to commence foreclosure proceedings. If the laws of the State where the property is located do not permit institution of foreclosure within such 30-day period, foreclosure shall be commenced not less than 30 days after such action can be taken. Under such proceedings, the mortgagee shall take one of the following actions:

(i) Obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor.

(ii) Institute and prosecute with reasonable diligence, proceedings for the appointment of a receiver to manage the mortgaged property and collect income therefrom.

(iii) Proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and to obtain the income therefrom under the mortgage and the law of the particular jurisdiction.

(iv) With the prior approval of the Commissioner, exercise the power of sale under a deed of trust.

(3) *Acquisition of title and possession.* The mortgagee, with the approval of the Commissioner, may elect to acquire possession of, and title to, the mortgaged property by means other than foreclosure. With the prior approval of the Commissioner, title may be transferred directly to the Commissioner.

(4) *Notice of foreclosure.* The mortgagee shall given written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion. Any developments which might delay the consummation of such proceedings shall be promptly reported to the Commissioner.

(5) *Transfer by mortgagee.* After acquiring title to and possession of the property, the mortgagee shall (within 30 days of such acquisition) transfer title and possession of the property to the Commissioner. The transfer shall be made in such manner as the Commissioner may require. On the date the deed is filed for record, the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance, and shall also notify the FHA Assistant Commissioner-Comptroller by telegram of such recordation.

(6) *Filing of deed and application.* The mortgagee shall file its application for insurance benefits at the time of filing for record of the deed conveying the property to the Commissioner.

(7) *Deed covenants and documents.* The deed conveying the property to the Commissioner shall contain covenants satisfactory to the Commissioner. The original deed shall be forwarded to the Commissioner as soon as received from the recording authority. The following documents shall be forwarded with the deed:

(i) A bill of sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction or by the acceptance of a deed in lieu of foreclosure.

(ii) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction and out of the foreclosure proceedings or other means by which the property was acquired.

(iii) An assignment of any claims on account of title insurance and fire or other hazard insurance, except claims which have been released with the prior approval of the Commissioner.

(8) *Title evidence.* Evidence of title, satisfactory to the Commissioner and meeting the requirements of § 207.258a shall be furnished to the Commissioner (without expense to him) within 45 days of the filing for record of the deed conveying the property to him.

(9) *Disposition of cash items.* The provisions of paragraph (b)(4) of this section, relating to the retention or delivery of cash items, shall be applica-

ble to cases involving the conveyance of property to the Commissioner.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under control number 2535-0061)

[36 FR 24537, Dec. 22, 1971, as amended at 44 FR 8195, Feb. 8, 1979; 50 FR 38786, Sept. 25, 1985; 51 FR 27838, Aug. 4, 1986]

§ 207.258a Title requirements.

(a) *Form of title evidence.* The title evidence submitted with a conveyance of the property to the Commissioner shall be in the form of an owner's policy of title insurance, except that, if an abstract and attorney's opinion were accepted by the Commissioner at the time of insurance, the title evidence may be in such form. The title evidence shall be effective on or after the date of the recording of the conveyance to the Commissioner.

(b) *Content of title evidence.* To be satisfactory to the Commissioner, the title evidence covering the property conveyed to him shall show the same title vested in the Commissioner as was vested in the mortgagor as of the date of the mortgage was filed for record, with the exception of such liens or other matters affecting the title as may be approved by the Commissioner.

§ 207.258b Partial payment of claim.

(a) Whenever the Commissioner receives notice under § 207.258 of a mortgagee's intention to file an insurance claim and to assign the mortgage to the Commissioner, the Commissioner may request the mortgagee, in lieu of assignment, to accept partial payment of the claim under the mortgage insurance contract and to recast the mortgage, under such terms and conditions as the Commissioner may determine.

(b) The Commissioner may request the mortgagee to participate in a partial payment of claim in lieu of assignment only after a determination that partial payment would be less costy to the Federal government than other reasonable alternatives for maintaining the low- and moderate-income character of the project. This determination shall be based upon the findings listed below and such other findings as the Commissioner deems appropriate:

(1) The mortgagee is entitled, under § 207.255, to assign the mortgage in exchange for the payment of insurance benefits;

(2) The relief resulting from partial payment, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(3) The project is, or can at reasonable cost be made, structurally sound;

(4) The management of the project is satisfactory to the Commissioner; and

(5) The default under the insured mortgage was beyond the control of the mortgagor.

(c) Partial payment of a claim under this section shall be made only when:

(1) The project is, or potentially could serve as, a low- and moderate-income housing resource;

(2) The property covered by the mortgage is free and clear of all liens other than the insured first mortgage and such other liens as the Commissioner may have approved;

(3) The mortgagee has voluntarily agreed to accept partial payment of the insurance claim under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner; and

(4) The mortgagor has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commissioner. The terms of the second mortgage will be determined on a case-by-case basis to assure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast insured mortgage. The Commissioner may provide for postponed amortization of the second mortgage.

(d) Payment of insurance benefits under this section shall be in cash. The Commissioner shall waive the deduction of one percent of the mortgage funds advanced to the mortgagor, provided for in § 207.259(b)(2)(iv), with respect to a partial payment of a claim

under this section. The items referred to in § 207.258(b)(4) shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner with respect to a partial payment of claim under this section.

[50 FR 38786, Sept. 25, 1985]

§ 207.259 Insurance benefits.

(a) *Method of payment.* Upon either an assignment of the mortgage to the Commissioner or a conveyance of the property to him in accordance with the requirements in § 207.258, payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner at the time of payment, except that where the mortgage is insured pursuant to:

(1) Section 223(e) of the National Housing Act, or

(2) Section 223(f) of the Act and at the time of the insurance endorsement, (i) the mortgage met the special eligibility requirements contained in § 207.32a(k) or (ii) the mortgage covered a property to be rehabilitated under Part 511 or Part 850 of this title, such claim shall be paid in cash, unless the mortgagee files a written request, with the application, for payment in debentures. A claim paid in cash on a mortgage insured under section 223(e) shall be paid from the Special Risk Insurance Fund. If the mortgagee files an application for payment in debentures on a claim on a mortgage insured under section 223(e) or 223(f), the claim shall be paid by issuing debentures and by paying any balance in cash.

(b) *Amount of payment; assignment of mortgage.* If the mortgage is assigned to the Commissioner, the insurance benefits shall be paid in an amount determined as follows:

(1) By adding to the unpaid principal amount of the mortgage, computed as of the date of default, the following items:

(i) The amount of all payments made by the mortgagee for taxes, special assessments and water rates which are liens prior to the mortgage; for insurance on the property; and for any mortgage insurance premiums paid after default.

(ii) An allowance for reasonable payments made by the mortgagee, with the approval of the Commissioner, for the completion and preservation of the property.

(iii) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 207.256 and 207.258 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section, the following items:

(i) Any amount received by the mortgagee on account of the mortgage after the date of default.

(ii) Any net income received by the mortgagee from the property covered by the mortgage after the date of default.

(iii) The sum of the cash items retained by the mortgagee pursuant to § 207.258(b)(5), except the balance of the mortgage loan not advanced to the mortgagor.

(iv) An amount equivalent to 1 percent of the mortgage funds advanced to the mortgagor and not repaid as of the date of default, except that all or part of the 1 percent may be waived by the Commissioner if, at his request and in lieu of foreclosure, the mortgage is assigned to the Secretary.

(c) *Amount of payment; conveyance of property.* If the property is conveyed to the Commissioner, the insurance benefits shall be paid in an amount determined in accordance with paragraph (b) of this section, except that the item set forth in paragraph (b)(2)(iv) of this section shall not be deducted.

(d) *Issuance of certificate of claim.* In addition to the insurance benefits paid under paragraph (b) or (c) of this

section, a certificate of claim shall be issued to the mortgagee.

(1) In the case of an assignment of the mortgage, the certificate shall be for an amount which the Commissioner determines to be sufficient, when added to the amount of the insurance benefits to equal the amount the mortgagee would have received if, on the date of assignment to the Commissioner, the mortgagor had paid in full all obligations under the mortgage. Where a conveyance is involved, there shall also be included in the certificate an allowance in a reasonable amount for any necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and in connection with the conveyance of the property to the Commissioner.

(2) The certificate of claim shall provide for an uncompounded annual interest increment of 3 percent to begin as of the date of either assignment or conveyance.

(e) *Issuance of debentures.* Where debentures are issued, they shall meet the following requirements:

(1) Be issued as of the date of default.

(2) Be registered as to principal and interest.

(3) At the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

(4) Mature 20 years from the date thereof.

(5) Be issued in multiples of $50, and any differences not in excess of $50 between the amount of insurance benefits to which the mortgagee is entitled hereunder and the aggregate face amount of the debentures issued, shall be paid in cash by the Commissioner to the mortgagee.

(6) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the FEDERAL REGISTER.

(7) Debentures representing the portion of the claim applicable to an operating loss loan shall bear interest at the rate in effect as of the date the commitment to insure such loan was issued, or as of the date of endorsement for insurance of such loan, whichever rate is the higher, although debentures representing the portion of the claim applicable to the original mortgage may bear interest at a different rate.

[36 FR 24537, Dec. 22, 1971, as amended at 41 FR 45829, Oct. 18, 1976; 47 FR 26125, June 17, 1982; 49 FR 24654, June 14, 1984; 51 FR 13142, Apr. 17, 1986; 51 FR 27838, Aug. 4, 1986]

§ 207.259a Waiver of title objection; mortgages formerly Commissioner-held.

If the Commissioner sells a mortgage and such mortgage is later reassigned to him in exchange for debentures or the property covered by such mortgage is later conveyed to him in exchange for debentures, the Commissioner will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage by the Commissioner.

§ 207.260 Protection of mortgage security.

(a) *Annual inspection of property by mortgagee.* As long as the mortgage is insured by the Commissioner, the mortgagee shall ascertain the general physical condition of the mortgaged property in each calendar year com-

mencing with the calendar year following completion of the project. The mortgagee shall furnish the Commissioner and the mortgagor with a copy of its inspection report, which shall contain the mortgagee's recommendations for any necessary action.

(b) *Damage to property by unreasonable use, abuse, or neglect.* If a claim for mortgage insurance benefits is filed, the Commissioner will accept an assignment of the mortgage or conveyance of the property even though the buildings or improvements thereon have been subjected to permanent or substantial damage through unreasonable use, abuse or neglect. The mortgagee shall not be held responsible for such damage and deductions therefor will not be made from mortgage insurance benefits.

(c) *Insurance of property against fire and other hazards.* The mortgaged property shall be insured against fire, flood, and other hazards as provided in the mortgage and as stipulated by the Federal Housing Commissioner. The mortgagee shall obtain such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of mortgage insurance may be terminated at the election of the Commissioner.

(d) *Effect of failure to provide insurance; cancellation of insurance.* If the mortgage is assigned to the Commissioner or the property is conveyed to the Commissioner and at the time of such assignment or conveyance the property has been damaged by fire or other hazards and loss has been sustained because of failure to keep the property insured as provided in the mortgage, the amount of such loss may be deducted from the insurance benefits paid by the Commissioner, unless the following conditions are met:

(1) The property shall have been covered by insurance against fire and other hazards at the time the mortgage was insured.

(2) Such insurance shall have been later canceled or renewal shall have been refused by the insuring company.

(3) The mortgagee shall have notified the Commissioner within 30 days (or within such further time as the Commissioner may approve) of the cancellation of the insurance or of the refusal of the insuring company to renew the insurance. Such notification shall have been accompanied by a certification that the mortgagee's diligent efforts to obtain insurance coverage against fire and other hazards at reasonably competitive rates were unsuccessful and that it would continue its efforts to obtain adequate insurance coverage at competitive rates.

(e) *Application of insurance proceeds.* (1) In the event a loss has occurred to the mortgaged property under any policy of fire or other hazard insurance and the mortgagee has received the proceeds therefrom, it shall not exercise its option under the mortgage to use the proceeds of such insurance for the repairing, replacing, or rebuilding of the premises, or apply them to the mortgage indebtedness, or make other disposition of such proceeds, without the prior written approval of the Commissioner.

(2) If the proceeds are applied to the mortgage with such prior written approval and result in the payment in full of the entire mortgage indebtedness, the contract of mortgage insurance made with the Commissioner shall thereupon terminate.

(3) If the Commissioner shall fail to give his approval to the use or application of such funds for either of said purposes within 30 days after written request by the mortgagee, the mortgagee may use or apply such funds for any of the purposes specified in the mortgage without the approval of the Commissioner.

[36 FR 24537, Dec. 22, 1971, as amended at 39 FR 26023, July 16, 1974]

ASSIGNMENTS

§ 207.261 Assignment of insured mortgages.

(a) *In general.* An approved mortgagee may assign, transfer or pledge an insured mortgage or a partial interest in an insured mortgage by way of a participation or other arrangement, in accordance with the terms and conditions prescribed in this section.

(b) *Bonds.* Bonds or other obligations issued in connection with an insured mortgage executed in the form of an indenture of trust may be transferred as provided in the trust indenture and the provisions of paragraph (g) of this section shall not be applicable to these transfers.

(c) *Transfers prior to full disbursement.* Transfers or pledges of the insured loan may be made prior to full disbursement only with the prior written approval of the Commissioner.

(d) *Transfers after full disbursement.* Transfers after full disbursement may be made only to a transferee approved by the Commissioner. Upon assumption by the transferee of all obligations under the contract of mortgage insurance, the transferor shall be released from its obligations under such contract. The transfer shall be reported to the Commissioner on a form satisfactory to the Commissioner.

(e) *Transfer of partial interest under participation agreement.* A partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the insured mortgage or mortgages shall be held by an approved mortgagee which, for the purposes of this paragraph (e), shall be referred to as the principal mortgagee;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(i) The principal mortgagee shall remain mortgagee of record under the contract of mortgage insurance;

(ii) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal mortgagee with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and

(iii) The mortgagor shall have no obligation to recognize or do business with anyone other than the principal mortgagee or its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

(f) *Government National Mortgage Association requirements.* (1) If the insured mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When an insured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the mortgagee-issuer and the holder of a partial interest under paragraph (e) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

(g) *Unauthorized transfer, pledge or assignment.* The contract of insurance may, at the option of the Commissioner and under such conditions as he may prescribe, be terminated in the event of a transfer, pledge or assignment of an insured mortgage or of a partial or participating interest therein, which does not meet the requirements contained in this section.

[36 FR 24537, Dec. 22, 1971, as amended at 51 FR 28702, Aug. 11, 1986]

Extension of Time

§ 207.261a Actions to be taken by mortgagee.

With respect to any action required of the mortgagee within a period of time prescribed by this subpart, the Commissioner may extend such period.

Rights in Housing Fund

§ 207.262 No vested right in fund.

Neither the mortgagee nor the mortgagor shall have any vested or other right in the General Insurance Fund.

Amendments

§ 207.499 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment

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shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

PART 209—INDIVIDUAL HOMES; WAR HOUSING MORTGAGE INSURANCE [SEC. 603]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.
209.251 Cross-reference.
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Subpart C—Servicing Responsibilities

209.400 Cross-reference.

AUTHORITY: Sec. 607, 55 Stat. 61; 12 U.S.C. 1742; interpret or apply sec. 603, 55 Stat. 56 as amended; 12 U.S.C. 1738.

SOURCE: 36 FR 24551, Dec. 22, 1971, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 209.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes in connection with war housing insurance under section 603 of the National Housing Act, except:

Sec.
203.259a Scope.
203.260 Amount of Mortgage Insurance Premium (MIP).
203.262 Due date of MIP.
203.263 Adjustment of initial MIP.
203.268 Pro rata payment of MIP.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.402 Items included in payment—conveyed properties.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 603 of the Act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24551, Dec. 22, 1971, as amended at 47 FR 30753, July 15, 1982; 48 FR 28807, June 23 1983]

§ 209.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 209.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second

premium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 209.265 Amount of MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid as provided in §§ 203.264 and 203.265 of this chapter. The MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

[47 FR 30754, July 15, 1982]

§ 209.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 209.275 Payment of delinquent interest.

The mortgagee may, with the written consent of the Commissioner, apply partial payments to delinquent interest to the exclusion of prior delinquent principal payments at a rate not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled. Where the partial payments are so applied, the date of default shall be 30 days after the due date of the earliest monthly payment any part of which remains unpaid.

§ 209.280 Special forbearance relief—ownership of ten unit project.

The Commissioner may consent to the mortgagee entering into a written agreement with the mortgagor providing for a postponement for a period not to exceed 1 year of that part of the montly payment which represents amortization of principal where the mortgagor is the owner of a group of properties consisting of a project of not less than 10 rental units. Such agreement shall obligate the mortgagor to deposit with the mortgagee the entire net income from all of the properties comprising the project, under arrangements satisfactory to the Commissioner. The agreement shall also obligate the mortgagor to resume monthly payments after the effective period of the agreement in such amounts as will completely amortize the mortgage indebtedness within the original maturity. The agreement shall in no way affect the amount of the annual MIP which shall continue to be calculated in accordance with the original amortization provisions.

§ 209.285 Insurance benefits—conveyed properties—foreclosure costs.

All of the provisions of § 203.402 of this chapter shall govern the computation of the items included in insurance benefits for conveyed properties, except that in lieu of the allowance in paragraph (f) of § 203.402 of this chapter for foreclosure costs or for the costs of acquiring the property otherwise, there shall be included on account of such costs, in those cases involving mortgages on which the unpaid principal obligation at the time of the institution of foreclosure exceeds 80 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and amount not in excess of the greater of the following:

(a) Two percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings, but not in excess of $75; or

(b) Two-thirds of the foreclosure costs or the costs of acquiring the property otherwise.

§ 209.290 Debenture interest rate.

Debentures shall bear interest at the rate of 21½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 23¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 21½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semiannually on the first day of January and the first day of July of each year.

§ 209.295 Maturity of debentures.

Debentures shall mature as follows:

(a) Where the mortgage was insured pursuant to a commitment issued on or before May 25, 1942, the debentures shall mature 3 years after the first day of July following the maturity date of the mortgage.

(b) Where the mortgage was insured pursuant to a commitment issued subsequent to May 25, 1942, the debentures shall mature 10 years after the date of issue.

§ 209.300 Applicability to outstanding mortgages and commitments.

The regulations in this part are effective as to all mortgages on which a commitment to insure under section 603 of the act is issued to an approved mortgagee on or after July 15, 1946. Whenever a mortgagee so desires, the provisions of this part shall become a part of any contract of insurance heretofore made. The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 603 of the act pursuant to the provisions of section 610 of such act is issued to an approved mortgagee on or after August 19, 1947.

Subpart C—Servicing Responsibilities

§ 209.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes in connection with war housing insurance under section 603 of the National Housing Act.

[42 FR 29303, June 8, 1977]

PART 210—MULTIFAMILY PROJECTS; WAR HOUSING MORTGAGE INSURANCE [SEC. 608]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.

210.251 Cross-reference.
210.265 Debenture interest rate and term.
210.275 Applicability to outstanding mortgages and commitments.

AUTHORITY: Sec. 607, 55 Stat. 61, as amended; sec. 611, 62 Stat. 1271, as amended; 12 U.S.C. 1742, 1746.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 210.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to war housing multifamily project mortgages insured under section 608 of the National Housing Act except the following provisions:

Sec.

207.259 Insurance benefits.
207.264 Effective date.

(b) For the purposes of this part all references in Subpart B, Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 608 of the Act.

[36 FR 24552, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

§ 210.265 Debenture interest rate and term.

All of the provisions of § 207.259 of this chapter covering payment of insurance benefits shall be applicable to mortgages insured under this part, except the debentures shall have the following characteristics:

(a) They shall be dated as of one month after the date of default prescribed in § 207.255.

(b) They shall mature 10 years from the date of issue.

(c) They shall bear interest at the rates determined as follows:

(1) 2½ percent, if the mortgage was endorsed for insurance prior to July 8, 1953.

(2) 2¾ percent, if the mortgage was endorsed for insurance after July 7, 1953; except that the rate shall be 2½ percent if the mortgage was endorsed for insurance pursuant to a commitment issued after May 28, 1954.

[36 FR 24552, Dec. 22, 1971]

§ 210.275 Applicability to outstanding mortgages and commitments.

The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure under section 608 of the Act is issued on or after August 15, 1946. The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 608 of the Act, pursuant to the provisions of section 610 of such Act, is issued on or after August 19, 1947.

[36 FR 24552, Dec. 22, 1971]

PART 211—SINGLE FAMILY PROJECT LOANS; WAR HOUSING MORTGAGE INSURANCE [SEC. 611]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.

211.251 Cross-reference.
211.255 Due date of initial MIP.
211.260 Adjustment of initial MIP.
211.265 Amount of MIP.
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211.275 Insurance benefits—conveyed properties—foreclosure costs.
211.280 Debenture interest rate.
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211.290 Applicability to outstanding mortgages and commitments.

Subpart C—Servicing Responsibilities

211.400 Cross-reference.

AUTHORITY: Sec. 607, 55 Stat. 61, as amended, sec. 611, 62 Stat. 1271, as amended; 12 U.S.C. 1742, 1746.

SOURCE: 36 FR 24553, Dec. 22, 1971, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 211.251 Cross-reference.

(a) All of the provisions of Subpart B Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes released from project mortgages in connection with large scale rental and sales war housing insurance under section 611 of the National Housing Act, except the following:

Sec.

203.259a Scope.
203.260 Amount of Mortgage Insurance Premium (MIP).
203.262 Due date of MIP.
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203.268 Pro rata payment of MIP.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
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203.402 Items included in payment—conveyed properties.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
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203.423 Distribution of distributive shares
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 611 of the Act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24553, Dec. 22, 1971, as amended at 47 FR 30754, July 15, 1982; 48 FR 28807, June 23, 1983]

§ 211.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 211.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second premium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 211.265 Amount of MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid as provided in §§ 203.264 and 203.265 of this chapter. The MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

[47 FR 30754, July 15, 1982]

§ 211.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP therefor paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 211.275 Insurance benefits—conveyed properties—foreclosure costs.

All the provisions of § 203.402 of this chapter shall govern the computation of the items included in insurance benefits for conveyed properties, except that in lieu of the allowance in paragraph (f) of § 203.402 of this chapter for foreclosure costs or for the costs of acquiring the property otherwise, there shall be included on account of such costs, in those cases involving mortgages on which the unpaid principal obligation at the time of the institution of foreclosure exceeds 80 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, an amount not in excess of the greater of the following:

(a) Two percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings, but not in excess of $75; or

(b) Two-thirds of the foreclosure costs or the costs of acquiring the property otherwise.

§ 211.280 Debenture interest rate.

Debentures shall bear interest at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semi-annually on the first day of January and the first day of July of each year.

§ 211.285 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 211.290 Applicability to outstanding mortgages and commitments.

The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure under section 611 of the Act is issued on or after the date of this part.

Subpart C—Servicing Responsibilities

§ 211.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes released from project mortgages in connection with large scale rentals and sales war housing insurance under section 611 of the National Housing Act.

[42 FR 29303, June 8, 1977]

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

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Subpart E—Servicing Responsibilities—Individual Properties Released From Project Mortgage

213.800 Cross-reference.

AUTHORITY: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24553, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Projects

Definitions

§ 213.1 Definitions.

As used in this subpart, the following terms will have the meaning indicated.

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Act" means the National Housing Act, as amended.

(c) "Private Mortgagor" means a private corporation or trust, formed or created with the approval of the Commissioner, or, in the case of an Investor Project, any mortgagor approved by the Commissioner, which is regulated or restricted by the Commissioner as to rents, sales, charges, capital structure, rate of return, and methods of operation.

(d) "Public Mortgagor" means a corporation or trust approved by the Commissioner which is also a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend or redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to rents, charges, capital structure, rate of return, or methods of operation.

(e) "Purchasing Cooperative" means the mortgagor of a Management Project which has purchased the project from the mortgagor of an Investor Project.

(f) "Management Project" means a project owned by a mortgagor nonprofit cooperative ownership housing corporation or trust which restricts permanent occupancy of the project to the members of the corporation or to the beneficiaries of the trust.

(g) "Sales Project" means a project owned by a mortgagor nonprofit housing corporation or trust which is organized for the purpose of construction of homes for members of the corporation or for beneficiaries of the trust.

(h) "Investor Project" means a project owned by a mortgagor which intends to sell the project to the mortgagor of a Management Project.

(i) "Existing Construction" means a project or projects constructed prior to the filing of an application for mortgage insurance under section 213(i) of the Act which is to be owned and operated by a Consumer Cooperative as a Management Project.

(j) "Consumer Cooperative" means:

(1) A nonprofit cooperative ownership housing corporation or trust which is the owner of an Existing Construction subject to an outstanding indebtedness and is approved by the Commissioner for refinancing the indebtedness with insured mortgage: or

(2) A nonprofit cooperative ownership housing corporation or trust organized for the purpose of purchasing an Existing Construction, the members and organizers of which do not have an identity of interest with the seller of the Existing Construction except where the Commissioner has approved such interest as being consistent with the objectives of the cooperative.

(3) A nonprofit cooperative housing corporation or trust initiated and organized by bona fide members of stockholders who are the ultimate consumers, or by a consumer group or sponsor, the members and organizers of which do not have an identity of interest with the builder or landowner and which conducts all transactions between it and the builder and the landowner on an arm's-length basis.

(k) "Approved percentage" means 90 percent in the case of an Investor Project, and 97 percent in the case of a Management, Sales or Existing Construction Project.

(l) "Borrower" means the mortgagor of a management project which receives and becomes primarily obligated for the payment of a supplementary loan, and such project shall be one of the following types:

(1) A project covered by a mortgage insured under section 213 of the Act.

(2) A project purchased from the Federal Government which is covered by an uninsured mortgage representing a part of the purchase price.

(m) "Supplementary Loan" means an advance of funds or credit evidenced by a note pursuant to section 213(j) of the Act.

(n) "Lender" means a financial institution meeting the requirements of §§ 203.1–203.4 and 203.6–203.8.

(o) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

[36 FR 24553, Dec. 22, 1971, as amended at 45 FR 33967, May 21, 1980; 50 FR 4647, Feb. 1, 1985]

APPLICATION AND COMMITMENT

§ 213.2 Application, SAMA letter and commitments.

(a) *Application.* An application for the issuance of a site appraisal and market analysis (SAMA) letter must be submitted by the project sponsor. An application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such applications shall be submitted to the local HUD field office on FHA approved forms. No application shall be considered unless accompanied by the exhibits required by the form. An applicant may initially elect to submit an application for a SAMA letter, a conditional commitment or a firm commitment depending upon the completeness of the drawings, specifications and other required exhibits.

(b) *Effect of SAMA letter, conditional and firm commitment—(1) SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project, and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a commitment is received before expiration of the SAMA letter:

(i) The land value fully improved (with offsite improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units.

(iii) The acceptability of the carrying charges proposed. Where such charges are unacceptable, the SAMA letter may establish specific charges which are acceptable.

(iv) The applicable land use intensity number, from which may be determined the maximum floor area and minimum acceptable recreational, parking, living and open space areas acceptable to the Commissioner for the proposed project.

(2) *Conditional commitment.* The issuance of a conditional commitment indicates completion of technical processing involving the estimated cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, the supportable cost, the financial and credit capacity of the sponsorship, financial requirements and the mortgage amount.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(c) *Term of SAMA letter, conditional commitment and firm commitment—(1) SAMA letter.* A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Conditional commitment.* A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(3) *Firm commitment—*(i) Insurance of advances: A firm commitment to insure advances shall be effective for a

period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

[39 FR 12002, Apr. 2, 1974, as amended at 40 FR 22829, May 27, 1975]

§ 213.3 Fees required by Commissioner.

(a) *Application for SAMA letter, conditional commitment and firm commitment*—(1) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the amount of the mortgage requested shall accompany the application for a SAMA letter.

(2) *Application fee—conditional commitment.* An application-commitment fee of $1 per thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the application fee for an unexpired SAMA letter has been collected. A fee of $2 per one thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the SAMA application fee has been paid but the SAMA letter has expired or in cases in which a SAMA application fee has not been paid.

(3) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which when added to prior fees received in connection with applications for a SAMA letter or a conditional commitment will aggregate $3 per thousand dollars of the requested mortgage amount to be insured.

(b) *Rejection of an application.* A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or conditional commitment, shall be grounds for rejection of an application for conditional or firm commitment, respectively. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(c) *Fees on increases*—(1) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. The combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by endorsement or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additonal inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the

project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(e) *Inspection fee.* The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(1) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(2) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

(f) *Transfer fee.* Upon application for approval of a case involving the transfer of physical assets or involving the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage.

(g) *Refund of fees.* If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection, and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(h) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[36 FR 24553, Dec. 22, 1971, as amended at 39 FR 12003, Apr. 2, 1974; 41 FR 14861, Apr. 8, 1976]

§ 213.4 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 213.5 Commissioner's estimate of replacement cost and appraised value.

As a condition precedent to insurance of a mortgage on a Sales Project or an Existing Construction Project, evidence must be produced showing that, prior to any sale of the dwellings in the project and stock of the mortgagor corporation, a written statement acceptable to the Commissioner setting forth the amount of the Commissioner's estimate of the replacement cost (appraised value in the case of a mortgage on an Existing Construction Project) of the property has been delivered by the seller, builder, sponsor, or such other person as may be required by the Commissioner, to the purchasers of the dwellings, and subscribers for such stock.

ELIGIBLE MORTGAGES AND LOANS

§ 213.6 Mortgage and loan requirements.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(2) Executed by a mortgagor with the qualifications as provided in this subpart.

(3) A first lien on property that conforms with the property standards prescribed by the Commissioner.

(b) *Disbursement of the mortgage.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

(c) *Management of property.* The mortgage shall provide that the mortgagor will not arrange for management of the property except in a manner and under an agreement approved by the mortgagee and the Commissioner in writing.

(d) *Operating loss loans and supplementary loans.* The lender shall obtain and present for insurance a note in a form acceptable to the Commissioner which is valid and enforceable against the borrower. In addition to the customary provisions the note shall contain the following:

(1) An acceleration clause, which at the option of the holder, operates to make the entire amount of the note due and payable in the event any installment of interest and principal is not paid within 30 days after it becomes due.

(2) On the reverse side, an endorsement panel in the form set forth in §§ 213.266 and 213.268.

§ 213.7 Maximum insurable amounts.

(a) *Management project.* The mortgage covering a Management Project shall not exceed the lesser of the following:

(1) 98 percent of the Commissioner's estimate of the replacement cost of the project; or

(2) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $25,350 without a bedroom.

(ii) $28,080 with one bedroom.

(iii) $33,540 with two bedrooms.

(iv) $41,340 with three bedrooms.

(v) $46,800 with four or more bedrooms.

(b) *Investor project.* The mortgage covering an Investor Project shall not exceed that prescribed for a Management Project, except that the percentage of replacement cost referred to shall not exceed 90 percent.

(c) *Sales project.* The mortgage covering a sales project shall not exceed a sum equal to the aggregate total of the maximum allowable mortgage amounts, if separate mortgages each meeting the requirements of section 203(b)(2) of the Act relating to occupant mortgagors, were placed upon each of the single-family units comprising the project.

(d) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase the dollar amount limitation in paragraphs (a)(2) and (g) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require, and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limita-

tions of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as the Commissioner finds may be necessary to compensate for such costs, but not to exceed, in any event, the maximum, including high cost area increases if any, otherwise applicable by more than one-half thereof.

(e) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) The Commissioner's estimate of the cost of the repair or rehabilitation; plus

(ii) Such portion of the outstanding indebtedness as does not exceed the approved percentage of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed the approved percentage of:

(i) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(ii) The actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(f) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

(g) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit, as provided in paragraph (a)(2) of this section, to not to exceeed:

(1) $29,250 per family unit without a bedroom.

(2) $32,760 per family unit with one bedroom.

(3) $40,170 per family unit with two bedrooms.

(4) $50,310 per family unit with three bedrooms.

(5) $56,885 per family unit with four or more bedrooms.

(h) *Existing construction.* A mortgage covering Existing Construction shall involve a principal obligation not in excess of the approved percentage of the Commissioner's appraised value for continued use as a cooperative, including therein such Commissioner required or approved repairs, improvements, alterations and additions, if any, as do not constitute rehabilitation of the project as determined by the Commissioner; provided, the insured mortgage shall be subject to the following further limitations:

(1) If the insured mortgage is to include the cost of refinancing an existing mortgage or mortgages acceptable to the Commissioner, the amount of the insured mortgage shall not exceed an amount equal to the outstanding balance of the existing mortgage or the total of the outstanding balances of the existing mortgages, plus the contract cost of such Commissioner required or approved repairs, improvements, alterations and additions, if any. If the principal obligation of the mortgage exceeds this amount, the mortgage shall be reduced by the

amount of such excess prior to final endorsement;

(2) If the Existing Construction project is to be acquired, the mortgage shall not exceed the purchase price and costs related thereto as approved by the Commissioner plus the contract cost of such Commissioner required or approved repairs, improvements, alterations and additions, if any. If the principal obligation of the mortgage exceeds this amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement.

(i) *Commercial and community facilities.* (1) A Management or an Investor Project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

(2) A Sales Project may include such community facilities as the Commissioner deems adequate to serve the occupants.

(3) The maximum mortgage amount for mortgages issued under this part may be increased by such amount as the Commissioner deems appropriate to provide for the inclusion of commercial or community facilities except that a mortgagee on a Sales Project shall not be increased to provide for commercial facilities. The total mortgage amount shall not exceed the ratios of loan to replacement cost or value specified in this section because of the inclusion of commercial or community facilities.

(j) *Mortgagor's minimum investment—Sales Projects.* At the time a mortgage executed by a mortgagor of a Sales Project is insured, the mortgagor shall have paid on account of the project in cash or its equivalent an amount, if any, approved and determined by the Commissioner to be the required minimum investment. At the time a mortgage is executed each member or stockholder shall have paid the amount required by § 213.509(b). With respect to applications received on or after July 5, 1961, the required minimum investment shall be at least 3 percent of the Commissioner's estimate of cost of acquisition or such larger amount as the Commissioner may determine.

(k) *Loans to cover 2-year operating loss—*(1) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 213.10 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(l) *Supplementary loans.* The supplementary loan shall not exceed an amount which, when added to the total unpaid balance of all outstanding mortgage indebtedness on the property plus loans insured by the Commissioner on the property, creates a total outstanding indebtedness equal to the original principal obligation of the mortgage, except as follows:

(1) If improvements or additonal community facilities are involved, the outstanding indebtedness may be increased by an amount which the Commissioner estimates to be equal to 97 percent of the value of such improvements or additonal facilities. The loan for improvements or additional community facilities shall not exceed the lesser of the estimated cost or actual cost, as determined by the Commissioner. The outstanding indebtedness thereby created may exceed the original principal obligation of the mortgage if it does not exceed the applica-

ble limits prescribed in paragraphs (a) through (g) of this section.

(2) If the financing of cooperative purchases and resales of memberships are involved, the loan shall not exceed an amount, approved by the Commissioner, as needed for such purposes.

(m) *Reduction of supplementary loan.* If the supplementary loan exceeds the prescribed maximum amount, the loan shall be reduced by the amount of such excess prior to final endorsement.

[36 FR 24553, Dec. 22, 1971, as amended at 39 FR 32435, Sept. 6, 1974; 41 FR 11286, Mar. 18, 1976; 41 FR 41880, Sept. 23, 1976; 53 FR 8863, Mar. 18, 1988]

§ 213.8 Amortization period.

(a) The mortgage or supplementary loan shall have a maturity and shall contain amortization provision satisfactory to the Commissioner.

(b) Mortgage maturity shall not exceed 40 years from the date of the beginning of amortization of the mortgage. In the case of a sales project mortgage maturity shall not exceed 35 years from the date of the beginning of amortization of the mortgage.

(c) Except as provided in paragraph (d) of this section, supplementary loan maturity shall not exceed the remaining term of the mortgage covering the management project.

(d) In the case of a project covered by an uninsured mortgage dated more than 20 years prior to the date of the commitment to insure a supplementary loan, the supplementary loan may have a maturity date up to 10 years in excess of the remaining term of the uninsured mortgage, but not more than 40 years from the commencement of amortization of such uninsured mortgage, if such loan is made to finance project repairs or improvements of such magnitude that the Commissioner deems them to be a major rehabilitation or modernization of the project.

§ 213.9 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for paymnets in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 213.10 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage or supplementary loan outstanding on the due date of each installment.

(c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[36 FR 24553, Dec. 22, 1971, as amended at 49 FR 19458, May 8, 1984]

§ 213.11 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 213.12 Covenant against liens.

(a) The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be required in connection with the insurance of an operating loss loan or a supplementary loan.

(b) The convenant required under paragraph (a) of this section shall not apply where a lien inferior to the lien of the insured mortgage is given in favor of a Federal, State or local governmental agency or instrumentality under such circumstances as may be approved by the Commissioner, provided the source of funds for repay-

ment of the inferior lien is limited to surplus cash or residual receipts.

[36 FR 24553, Dec. 22, 1971, as amended at 48 FR 35391, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

§ 213.13 Covenant for fire insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of completion of the entire project or units thereof. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as interests may appear.

§ 213.14 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 213.15 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 213.16 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the Commissioner as to each of the following points:

(1) That neither it nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. Dis-

trict Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

§ 213.17 Mortgage release provisions.

A mortgage executed by a mortgagor of a Sales Type Project shall provide that at any time after the completion of the construction of the project, the property underlying such mortgage may be released in whole or in part upon payment of the unpaid balance of the blanket mortgage allocable to the property released. Where the mortgage does not contain release provisions, no property shall, except with the consent of the Commissioner, be released from the lien thereof so long as the mortgage insurance is in force.

§ 213.18 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (d) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgagee may include a provision for such additional prepayment charge as may be agreed upon between the mortgagor and mortgagee, except that no such charge shall be made for a prepayment which does not exceed 15 percent of the original principal amount of the mortgage in any one calendar year or which results from:

(1) A payment requirement of the Commissioner;

(2) Release of individual properties in accordance with the provisions of a mortgage in a Sales Project;

(3) Sale of an Investor Project within 2 years after its completion to a Purchasing Cooperative unless the Commissioner shall require the payment of such additional charge.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a "late charge," not to exceed 2 cents for each dollar of each payment to interest and/or principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24553, Dec. 22, 1971, as amended at 51 FR 2359, Jan. 16, 1986]

§ 213.19 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under such contract to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

§ 213.19a Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8883, Mar. 18, 1988]

ELIGIBLE MORTGAGORS

§ 213.20 Eligibility of mortgagors.

(a) In order to be eligible under this part, and applicant shall be a Private or Public Mortgagor of:

(1) A Management Project;

(2) A Sales Project;

(3) An Investor Project; or

(4) An Existing Construction Project.

(b) A Public Mortgagor may be an eligible mortgagor without regulation or restriction by the Commissioner as to rents, sales, charges, capital structure, rate of return, and methods of operation.

(c) To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0059 and 2502-0118)

[36 FR 24553, Dec. 22, 1971, as amended at 54 FR 39693, Sept. 27, 1989]

SUPERVISION OF MORTGAGORS

§ 213.21 Liens.

If a Public Mortgagor, or the Alaska Housing Authority, or the Government of Guam or Hawaii, or any agency or instrumentality thereof is the mortgagor, liens inferior to the lien of the insured mortgage may be allowed against properties of such mortgagors. The mortgagor in such case shall have initial funds which may be considered in lieu of the equity required of other mortgagors and such funds, which may be in the form of Government grants, loans, or subsidies, or in other form, if sufficient in amount, will be considered satisfactory provided they do not create a lien against the property prior to that of the insured mortgage.

§ 213.22 Obligations of mortgagor.

In all other cases a mortgagor must certify at final endorsement of the loan for insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there are not outstanding any other unpaid obligations, except such obligations as have been approved by the Commissioner as to terms, form, and amount.

§ 213.23 Regulation and restriction of mortgagors.

(a) *Preferred stock or regulatory agreement.* The regulation or restriction of Private Mortgagors will be provided for in the certificate of incorporation or other instrument under which the mortgagor is created, hereinafter referred to as the "charter," and will be made effective through a regulatory agreement, or the issuance of preferred stock (or membership) which will enable the Commissioner to exercise majority voting rights in the event of violation of a provision of the charter or (except as to the mortgagor of an Investor Project) at any time during the period between initial and final endorsement for mortgage insurance by the Commissioner whether or not such violation has occurred. Such stock shall be issued in a manner prescribed by the Commissioner in consideration of the payment by the Com-

missioner of not exceeding in the aggregate $100.

(b) *Rights of the Commissioner.* By the exercise of the preferred stock voting rights, the Commissioner may remove the existing directors of the mortgagor corporation and elect new directors to serve in their place. Directors so elected by the Commissioner, in the event of a violation, shall serve only for a period coexistent with the duration of such violation or until the Commissioner is assured in a manner satisfactory to him against future violations of a similar nature. Upon the termination of the contract of insurance or any succeeding contract or agreement covering the mortgage obligation, all regulation and restriction of the mortgagor shall terminate and the shares of special stock or other evidence of beneficial interest shall be surrendered by the Commissioner upon reimbursement of his payment therefor.

(c) *Supplementary loans.* Prior to the insurance of a supplementary loan, the mortgagor of a management project shall amend its certificate of incorporation or regulatory agreement in such manner as the Commissioner may require.

§ 213.24 Issuance of stock.

Shares of capital stock, either with or without par value, or certificates of membership, or such evidences of interest in the case of a trust, may be issued if approved by the Commissioner. Such stock or interest, together with paid-in surplus, if any, shall represent the capital investment.

§ 213.25 Patronage refunds.

(a) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be distributed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds.

(b) For projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies), the provisions on use of project funds of the applicable Section 8 regulation, contained in §§ 880.601(e), 881.601(e) or § 883.702(e) respectively, shall apply; except that for partially-assisted projects, as defined in Part 880, 881 or 883, whichever is applicable, paragraph (a) of this section shall apply.

[36 FR 24553, Dec. 22, 1971, as amended at 45 FR 50733, July 31, 1980]

§ 213.26 Working capital.

(a) The amount of working capital, if any, required by the Commissioner to be deposited by the mortgagor with the mortgagee or in a depository satisfactory to the mortgagee and under its control, shall not exceed 2 percent of the original amount of the mortgage. Disbursement from such deposit shall be made only in a manner prescribed by the Commissioner.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 213.27 Assurances of completion.

(a) Before initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to the construction of the project. Such cash shall be held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such cash to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any mortgage money. If all or part of the funds required under this paragraph are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the

prior written approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds, to pay the cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the mortgagor, that portion must be disbursed in full before the disbursement of mortgage proceeds.

(b) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(c) The Commissioner shall require assurance of completion of offsite public utitlities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

(d) Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by the mortgage insurance, each progress payment shall be approved by the Commissioner.

(e) The mortgagor shall furnish assurance of completion of the project in the form of a personal indemnity agreement, corporate surety bonds for payment and performance, or a completion assurance agreement secured by a cash deposit. All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies issuing bonds and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner. The minimum requirements for assurance of completion are as follows:

(1) Where the estimated cost of construction or rehabilitation is $500,000 or less, the assurance of completion will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as the general contractor, or by the individuals operating as the general contractor. Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, the assurance shall be as set forth in paragraph (e) (2) or (3) of this section.

(2) Where the structure contains no elevator, or where the structure contains an elevator and is three stories or less, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(3) Where the structure contains an elevator and is four stories or more, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 25 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(f)(1) For a supplementary loan involving improvements, repairs or the

financing of community facilities, the Commissioner may require such assurance of completion as he deems necessary.

(2) A supplementary loan may be required to be secured in a manner satisfactory to the Commissioner. The security may take the form of collateral security, a modification of existing instruments and title evidence or such other form as may be prescribed by the Commissioner.

(g) The mortgagee may accept, in lieu of a cash deposit requied by paragraphs (b), (c) and (e) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. If all or part of the funds required under paragraph (a) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept for the portion so provided, in lieu of a cash deposit required by paragraph (a) of this section, either an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution or an agreement, as described in § 207.19(c)(7), which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee. The mortgagee of record may not be the issuer of any letter of credit referred to in this paragraph without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance under the letter of credit.

[36 FR 24553, Dec. 22, 1971, as amended at 41 FR 41516, Sept. 27, 1976; 48 FR 35391, Aug. 4, 1983; 48 FR 44070, Sept. 27, 1983; 49 FR 12215, Mar. 29, 1984]

§ 213.27a Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that: (1) Storage of the number of components required for timely construction progress at the construction site is impractical or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the insured mortgaged property shall have the responsibility for: (1) Insuring the components in the name of the mortgagor while in transit and storage; and (2) delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the compo-

nents, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

[44 FR 8195, Feb. 8, 1979, as amended at 48 FR 15897, Apr. 13, 1983]

§ 213.28 Labor standards and prevailing wage requirements.

(a) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations in 29 CFR Part 5.

(b) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(c) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General under 29 CFR Part 5.

(d) No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribed, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(e) Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

(f) Compliance with the provisions of this section shall be evidenced at such time and in such manner as the Commissioner may prescribe.

[36 FR 24553, Dec. 22, 1971, as amended at 49 FR 45126, Nov. 15, 1984]

§ 213.29 Rents and charges.

The mortgagor shall not permit occupancy except in accordance with the scheduled of charges and under an Occupancy Agreement or lease approved by the Commissioner.

§ 213.30 Methods of operation.

(a) Except with the prior written approval of the Commissioner, no compensation shall be paid by the corporation to its officers or directors, as such, nor to any person or corporation for supervisory or managerial services. No compensation shall be paid by the corporation to any employee in the excess of an amount agreed upon by the Commissioner and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation, except on account of approved occupancy charges.

(b) The corporation shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and in such condition as will preserve the health and safety of its occupants.

(c)(1) In all projects, except those involving rehabilitation where the mortgage does not exceed $200,000, a fund for replacements shall be established and maintained with the mortgagee so long as the mortgage insurance is in force. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter.

(2) For projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies), the replacement reserve provisions of the applicable Section 8 regulation, contained at §§ 880.602, 881.602 or § 883.703 respectively, shall apply; except that for partially-assisted Section 8 projects, as defined in Part 880, 881 or 883, whichever is applicable, paragraph (c)(1) of this section shall apply.

(d) A General Operating Reserve shall also be established and maintained so long as the mortgage insurance is in force, in a manner and for the purposes specified in the charter.

(e) The corporation shall not, without prior approval of the Commissioner, incur liabilities (other than the insured mortgage) in excess of an amount to be specified in the charter.

(f) The corporation, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(g) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the corporation will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that so long as the mortgage is insured by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner, will be in such form as to permit a speedy and effective audit, and, as may otherwise be prescribed by the Commissioner, will be maintained for such periods of time as may be prescribed by the Commissioner and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The corporation shall file with the Commissioner and mortgagee the following reports verified by the signature of such officers of the corporation as the Commissioner may designate and in such form as prescribed by the Commissioner:

(1) Monthly or quarterly operating reports as and when required by the Commissioner;

(2) A semi-annual financial statement within sixty (60) days after the semi-annual period when required by the Commissioner;

(3) Annual reports prepared by a certified public accountant or an independent public accountant, within sixty (60) days after the end of each fiscal year;

(4) Specific answers to questions upon which information is desired from time to time relative to the operation and condition of the property and the status of the insured mortgage;

(5) Copies of minutes of stockholders' meetings certified to by the Secretary of the corporation, within thirty (30) days after such meetings and,

when requested by the Commissioner, copies of minutes of directors' meetings.

(h) Where the mortgagor obtains a supplementary loan to purchase and resell memberships, downpayments made by purchasers of memberships shall not be less than the downpayments requested in the original sales of memberships.

[36 FR 24553, Dec. 22, 1971, as amended at 45 FR 50732, July 31, 1980]

§ 213.31 Exceptions and special provisions.

(a) A Public Mortgagor shall not be subject to regulation and restriction by the Commissioner with respect to matters set forth in §§ 213.24, 213.25, 213.29, and 213.30.

(b) If the mortgage is to be insured after completion of the improvements, the mortgagor shall not be subject to the requirement of § 213.27.

(c) In addition to the provisions of this part, the mortgagor of an Investor Project shall be subject to the provisions of § 207.19(b) (Rate of return), § 207.19(e) (Rent and charges), and § 207.26 (Form of contract), of this chapter. Such mortgagor shall not be subject to the provisions of §§ 213.25, 213.30(d), and 213.34.

(d) If the mortgage to be insured covers Existing Construction, §§ 213.33, 213.34, 213.35, 213.36, and 213.38 shall not be applicable.

(e) The provisions of § 213.27 shall apply to the mortgage covering Existing Construction only where Commissioner required or approved repairs, improvements, alterations, and additions are involved and insured advances are to be made. In such cases, assurance of completion of the project shall be deemed to refer to assurance of completion of such repairs, improvements, alterations, and additions.

(f) The provisions of § 213.28 shall apply to the mortgage covering Existing Construction only to the extent that Commissioner required or approved repairs, improvements, alterations, and additions are involved and reference therein relating to contracts, subcontracts, and the construction of the project shall be deemed to refer to the construction of such repairs, improvements, alterations, and additions.

(g) The provisions of § 213.28 shall not apply to a mortgage covering Existing Construction which covering Existing Construction which does not involve Commissioner required or approved repairs, improvements, alterations, and additions, except that as to such Existing Construction where the construction of the project or projects was commenced after September 23, 1959, inspection by the Commissioner and compliance with the provisions of section 212 of the Act relating to prevailing wage requirements shall be a prerequisite of mortgage insurance.

(h) The provisions of § 213.28 shall not apply to a supplementary loan covering the purchase of an existing community facility.

(i) Part 213 sections and portions of sections applicable to supplementary loans are: §§ 213.1 (a), (b), (f), (l), (m), and (n); 213.2; 213.3; 213.4; 213.6(d); 213.7 (l) and (m); 213.8; 213.9(a); 213.10; 213.18 (a), (b)(1), and (c); 213.27(e); 213.28 (a) through (f); and 213.39. In the foregoing provisions, unless otherwise indicated:

(1) "Mortgage" shall mean "supplementary loan."

(2) "Mortgagee" shall mean "lender."

(3) "Mortgagor" shall mean "borrower."

(4) "Project" shall mean "improvements, repairs, or community facilities."

§ 213.32 Certificate of mortgagor regarding use of property for transient or hotel purposes.

The mortgagor shall certify under oath that, so long as the mortgage is insured, the mortgagor will not rent, permit the rental, or permit the offering for rental, of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purposes of this certificate, rental for transient or hotel purposes shall mean:

(a) Rental for any period less than 30 days, or (b) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and

laundering of linen, and bellboy service.

ADJUSTMENT OF MORTGAGE AMOUNT

§ 213.33 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder.

(2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 213.34 Form of contract.

The form of contract between the mortgagor of a Management Type Project and builder shall be determined in accordance with the following:

(a) *Non-identity of interest.* If it is found by the Commissioner that: (1) No identity of interest exists between the morgagor or any of its officers, directors or stockholders and the general contractor, and (2) a cost plus form of contract is not required in the interests of the Commissioner; there may be used a lump sum form of contract.

(b) *Identity of interest.* If the Commissioner does not make the findings described in paragraph (a) of this section, the form of contract shall provide for payment of the actual cost of construction, not to exceed an upset price and may provide for payment of a specified builder's fee in addition thereto. The builder's fee shall not exceed a reasonable allowance therefor as established by the Commissioner, in accordance with customary practices in the area.

(c) *Identity of interest—subcontractor.* If it is found by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors or stockholders and any subcontractor or material supplier, the mortgagor and the general contractor must certify in a form prescribed by the Commissioner prior to final endorsement of the mortgage for insurance that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 213.34a Disposition of general contractor's holdback.

In those cases in which a conditional commitment has been issued after March 4, 1977, and there is no identity of interest between the mortgagor and general contractor, the following provisions shall be applicable:

(a) The construction contract, whether it be lump sum or cost-plus, shall contain provisions whereby the mortgagor and contractor agree that the general contractor:

(1) Shall submit to the mortgagor, on a monthly basis, a requisition for payment equal to the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior payments made to the general contractor;

(2) Shall accept, for each and every requisition, 90 percent of the amount approved for payment, and shall agree that the remaining 10 percent shall be retained by the mortgagee to be deposited in an escrow account when the construction of the project has been substantially completed, with the exception of minor incomplete on-site construction items, and the following requirements have been met:

(i) All work under the construction contract, requiring inspection by municipal or other governmental authorities having jurisdiction, has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(ii) All required certificates of occupancy or other approvals, with respect to all units of the project, have been issued by the State or local governmental authorities having jurisdiction, except that, in the event the mortgagor fails or refuses to file requests for issuance of such certificates, this requirement will be satisfied upon the Commissioner's finding that such certificates or approvals would be forthcoming but for the mortgagor's failure to request their issuance;

(iii) Permissions to occupy for all units of the project have been issued by the Commissioner; and

(iv) In the event a cost-plus form of contract has been used, that the mortgagee has been notified by the HUD field office that the mortgagor has filed the "Contractor's Certification of Actual Cost" with the Commissioner, except that, if the mortgagor fails or refuses to file such a certificate within a reasonable time, the general contractor's direct submission of the certificate of actual cost may be the basis for the HUD field office notification and the establishment of the escrow.

(3) Shall be entitled to the funds in the escrow account upon compliance with the terms of the Escrow Agreement which shall contain the conditions for release of the escrow account to the general contractor.

(b) The building loan agreement shall provide that:

(1) The mortgagor shall request monthly from the mortgagee an advance of mortgage proceeds for construction items in the amount of the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior advances;

(2) The mortgagor shall accept, for each and every advance, 90 percent of the amount of advance approved;

(3) The mortgagee shall retain the remaining 10 percent of each approved advance;

(4) The mortgagee shall transfer the 10 percent holdback for each advance, minus an amount that is one and one-half times the cost estimated by the Commissioner that is required for the completion of any minor incomplete on-site construction items, to an escrow account when the general contractor completes the construction as determined by the Commissioner and meets the requirements set forth in paragraphs (a)(2) (i), (ii) and (iii); and (a)(2) (i), (ii), (iii) and (iv) of this section for a general contractor who has executed a lump sum form of contract or cost-plus form of contract, respectively.

(5) The 10 percent holdback shall not be construed as an advance from mortgage proceeds by the mortgagee until the mortgagee places the funds in an escrow account in accordance with paragraph (b)(4) of this section; and

(6) The mortgagee and mortgagor agree that notwithstanding the inclusion in the building loan agreement of the provisions contained in paragraphs (b) (1) through (5) of this section, the mortgagee is not required to make any advance of mortgage proceeds if the mortgagor is in default under the building loan agreement, other than the advance of the 10 percent holdback in accordance with paragraph (b)(4) of this section, and, except as altered by the provisions of this paragraph, the rights and obligations of the mortgagee and mortgagor under the building loan agreement shall not be affected.

(c) An Escrow Agreement shall be established for the purposes set forth in paragraphs (a) and (b) of this section and the depository under such agreement shall be either the mortgagee or a party designated by the mortgagee. The agreement shall contain provisions for the release of the escrow fund which shall include the requirement that the general contractor submit its certificate of actual cost for approval by the Commissioner and that the certificate by approved by the Commissioner before the contractor shall be entitled to the fund. If the

mortgagor and general contractor have entered into a lump sum contract, the requirement for the certificate of actual cost shall not be applicable. The Escrow Agreement shall provide that the depository will:

(1) Release the funds upon request of the general contractor and approval of the Commissioner;

(2) Invest the funds in an interest bearing account, if the mortgagor and general contractor have so agreed, which interest shall be paid to the general contractor when the escrowed funds are released to the general contractor;

(3) Release to the general contractor only that portion of the escrowed funds which do not exceed the amount of costs approved by the Commissioner on the "Contractor's Certificate of Actual Cost", or, in the case of a general contractor which has entered into a lump sum contract, an amount, which when added to payments already received, does not exceed the amount of the lump sum contract. In the event the contractor has not completed construction of the project within the time provided in the construction contract, there shall be deducted from the escrow fund an amount which the Commissioner determines equals the liquidated damages as provided in the construction contract.

(4) Disburse any remaining amount in the escrow fund in accordance with the terms of the escrow agreement; and

(d) The mortgagee's request for approval by the Commissioner of an advance for construction items shall contain a provision that such approval by the Commissioner shall constitute approval for mortgage insurance of the 10 percent holdback retained by the mortgagee when the retained funds are placed in an escrow account in accordance with this section. The mortgage insurance on the funds retained by the mortgagee shall be effective on the date the funds are transferred to the escrow account.

(e) For the purposes of this section, "substantial completion" shall mean that the Commissioner has issued a final inspection report and that the Commissioner has determined that the contractor has completed the project in accordance with the terms of the construction contract.

[42 FR 765, Jan. 4, 1977; 42 FR 2954, Jan. 14, 1977]

§ 213.35 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commisioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, or partners, of:

(1) The construction contract, where the mortgagor and the general contractor are separate entities, or the construction of the project where the mortgagor is the general contractor and there is no such contract. In the case of a lump sum contract, the amount shown in the certificate shall include all payments under the contract;

(2) In the case of a cost plus-fixed fee contract or where the mortgagor is the general contractor, the amount shown in the certificate shall include such allowance of general overhead items as are acceptable to the Commissioner plus a reasonable allowance for the builder's profit as established by the Commissioner;

(3) Architect's fee;

(4) Off-site public utilities and streets not included in the general contract;

(5) Organizational and legal work; and

(6) Other items of expense approved by the Commissioner.

(b)(1) Where a cost plus form of contract is used, the mortgagor shall submit along with its certification of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to

the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(2) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

(c) The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(d) The certificate of actual cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 213.36 Adjustment resulting from cost certification.

Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost, provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements. If the principal obligation of the mortgage exceeds the approved percentage of this total amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 213.37 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with either paragraph (a) or paragraph (b) of § 213.35 and the applicable cost certification procedure described there in will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds will be used to finance the purchase of the land or structures involved the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repairs or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or the approved percentage of the Commissioner's estimate of the fair market value, of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase

price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value, of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the approved percentage of this amount, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

§ 213.38 Requisites of agreement and certification.

(a) Any agreement, undertaking, statement or certification required by § 213.35 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

(b) Upon the Commissioner's approval of the mortgagor's certification as required by § 213.35 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

Eligible Mortgagees and Lenders

§ 213.39 Qualifications.

The provisions of §§ 203.1 through 203.4 and 203.6–203.9 shall apply and govern the eligibility, qualifications and requirements of mortgagees and lenders under this subpart.

[45 FR 33967, May 21, 1980]

Property Requirements

§ 213.40 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 213.1. The mortgage shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed; or

(4) Under a lease executed by a government agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed.

(b) The property constituting security for the mortgage shall be held by an eligible mortgagor as herein defined and shall at the time the mortgage is insured be free and clear of all liens other than that of such mortgage except as otherwise provided in this subpart.

[36 FR 24553, Dec. 22, 1971, as amended at 50 FR 4647, Feb. 1, 1985]

§ 213.42 Minimum number of units.

The project shall consist of not less than five dwelling units which may be detached, semidetached, or row house, or multifamily structures. In the case of a Sales Project, such units shall be single-family dwellings.

Title

§ 213.43 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 213.44 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a)(1) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a) (2), (3), or (4) of this section, as the Commissioner may

best copy available

require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company, or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project involving rehabilitation where the mortgage does not exceed $200,000.

Other Eligible Mortgages

§ 213.45 Eligibility of miscellaneous type mortgages.

(a) A mortgage executed by a mortgagor of a Management Type project covering five or more units and which meets the requirements of this part, except as modified by this section shall be eligible for insurance under this part.

(b) The mortgage may be accepted for insurance if—

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Pub. L. 849, Seventy-sixth Congress, as amended; Pub. L. 781, Seventy-sixth Congress, as amended; or Pub. L. 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, of any housing (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Pub. L. 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision for the occupancy of veterans (as defined in § 203.12 of this chapter) their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this subparagraph exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (b) (1), (2), (3), and (4) of this section.

(c) [Reserved]

(d) A mortgage given to refinance an existing mortgage insured under the act may be insured under this subpart pursuant to section 223(a)(7) of the Act. The new mortgage shall be limited in amount and in term as follows:

(1) The principal of the new mortgage shall not exceed the lowest of these amounts:

(i) The original principal amount of the existing insured mortgage.

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added:

(*a*) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(*b*) The costs, as determined by the Commissioner, of capital improvements, upgrading or additions required to be made to the property.

(*c*) Loan closing charges.

(iii) 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(2) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

(e) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him in connection with payment under a contract of mortgage insurnace, or executed in connection with a sale by him of any property acquired under any section or title of the Act.

§ 213.45a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, construction, or purchase of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages) as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of lower income.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 213.45b Eligibility of mortgages covering housing near military installations.

(a) A mortgage financing the construction, purchase, repair or rehabilitation of property located near any installation of the U.S. Armed Forces in a federally impacted area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all the requirements of this subpart, except that the property or project does not have to be economically sound or constitute an acceptable risk if:

(1) The Secretary finds that the benefits to be derived from such use of the property outweigh the risk of probable cost to the Government, and

(2) The Secretary of Defense certifies that there is no intention to curtail substantially the personnel assigned or to be assigned to such installation.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 238(c) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

[42 FR 59674, Nov. 18, 1977]

EXTENSION OF TIME AND PROTECTION OF WORK IN PROCESS

§ 213.46 Actions by Commissioner.

Where the mortgagee or lender has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 213.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations—Projects

§ 213.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 213 of the National Housing Act, except the following provisions:

Sec.
207.251 Definitions.
207.252 First, second, and third premiums.
207.254 Form of endorsement.

(b) For the purposes of this subpart, all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 213 of the Act, and all references in Part 207 of this chapter to the General Insurance Fund shall be deemed to refer to the Cooperative Management Housing Insurance Fund in cases involving mortgages which are the obligation of the Cooperative Management Housing Insurance Fund.

(c) The provisions of §§ 207.255, 207.256, 207.257, 207.261, 207.262 and 207.263 of this chapter shall apply to supplementary loans insured under section 213(j) of the Act. In connection with the foregoing provisions the terms "mortgagor", "mortgagee", "mortgage" shall be construed to mean "borrower", "lender", and "supplementary loan, including required security instrument".

(d) Where the provisions of this subpart are applicable to supplementary loans, the terms "mortgagor", "mortgagee", "mortgage", shall be construed to mean "borrower", "lender", and "supplementary loan, including required security instrument".

(e) Where the provisons of this subpart are applicable to operating loss loans, the terms "mortgagor," "mortgagee" and "mortgage" shall be construed to mean "borrower," "lender" and "operating loss loan, including re-

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quired security instrument," respectively.

[36 FR 24553, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

§ 213.252 Definitions.

The definitions contained in § 213.1 shall apply to this subpart and in addition the following terms shall have the meaning indicated.

(a) "Contract of Insurance" means the agreement evidenced by endorsement of the credit instrument by the Commissioner or his duly authorized representative and includes the terms, conditions and provisions of this subpart and of the National Housing Act.

(b) "Insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner.

(c) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) "Mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(e) "Mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(f) "Project Mortgage" means a blanket mortgage insured under section 213 of the Act, covering a group of not less than five single-family dwellings.

§ 213.253 Premiums upon initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage or a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of the section shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Operating loss loans and supplementary loans.* The provisions of paragraph (a) of this section shall apply to any operating loss loan and to any supplementary loan, except a supplementary loan to finance the acquisition of an existing community facility.

§ 213.254 Premiums where first principal payment more than one year after initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the first, second and third premiums shall equal the sum of: (i) One percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement, and (ii) one-half of one percent per annum of the average outstanding

principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(2) If the date of the first principal payment of a mortgage is more than one year following the date of the initial insurance endorsement and the mortgage is paid in full prior to the date of such first principal payment, the first and second premiums collected shall be adjusted so that the aggregate of the two premiums shall equal the sum of: (i) One percent of the average outstanding principal obligation of the mortgage for the year following the date of the initial insurance endorsement and (ii) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of this section shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; insurance of advances.* The provisions of paragraph (a) shall apply to any supplementary loan involving insurance of advances.

§ 213.255 Premiums where first principal payment one year or less after initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the first and second premiums shall equal the sum of (i) one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment, and (ii) one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(2) If the date of the first principal payment of a mortgage is one year or less than one year following the date of the initial insurance endorsement and the mortgage is paid in full prior to the date of such first principal payment, the first and only premium collected shall be adjusted so that the total premium shall equal one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of this section shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; insurance of advances.* The provisions of paragraph shall apply to a supplementary loan involving insurance of advances.

§ 213.256 Premiums; insurance upon completion.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) Where the mortgage is initially and fi-

nally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the first and second premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(2) Where the mortgage is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion and is paid in full prior to the date of the first principal payment, the first and only premium collected shall be adjusted so that the total premium shall equal one-half of one percent per annum of the average outstanding principal obigation of the mortgage for the period from the date of the insurance endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of this section shall apply to Existing Construction not involving insurance of advances but involved Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loans; Commitment to Insure Upon Completion.* The provisions of paragraphs (a) and (b) of this section shall apply to a supplementary loan endorsed for insurance pursuant to a Commitment to Insure Upon Completion.

§ 213.257 Premiums; purchasing cooperatives; Existing Construction; supplementary loans to purchase existing community facility.

(a) Where a mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsor Project or covers Existing Construction not involving Commissioner approved or required repairs, improvements, alterations and additions, the mortgagee, on the date of the insurance endorsement, shall pay a first premium equal to one-half of one percent of the principal obligation of the mortgage for the period from the date of the insruance endorsement to one year following the date of the first principal payment. On the anniversary of the first principal payment, this first premium shall be adjusted to equal one-half of one percent of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(b) The premium provisions of paragraph (a) of this section shall apply to a supplementary loan to purchase an existing community facility.

§ 213.258 Subsequent annual premiums.

(a) Until the mortgage is paid in full or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(b) The provisions of paragraph (a) of this section shall apply to operating loss loans and to supplementary loans.

§ 213.259 Computation of subsequent annual premiums.

The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without

taking into account delinquent payments or prepayments.

§ 213.259a Premiums—mortgages insured pursuant to section 238(c) of the Act.

All of the provisions of §§ 213.253 through 213.259 governing mortgage insurance premiums shall apply to mortgages insured under this subpart pursuant to section 238(c) of the Act, except that all mortgage insurance premiums due on such mortgages in accordance with §§ 213.253 through 213.259 shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

§ 213.260 Allowable methods of premium payment.

Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this part.

§ 213.265 Modifications and consolidations.

Where a mortgage covering an investor sponsored project is modified and consolidated with the mortgage of a purchasing nonprofit cooperative housing corporation or trust, it shall be deemed to be paid in full as of the date of such modification and consolidation.

[37 FR 8662, Apr. 29, 1972]

§ 213.266 Initial insurance endorsement.

The Commissioner shall indicate his insurance of the mortgage or supplementary loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage or supplementary loan is insured and the date of insurance.

§ 213.266a Insurance fund obligations.

A mortgage endorsed for insurance under section 213 of the Act shall be the obligation either of the Cooperative Management Housing Insurance Fund or of the General Insurance Fund. The determination of the applicable fund shall be governed by the following:

(a) A mortgage insured under section 213(a)(1) of the Act or under section 213(a)(3) if the project has been acquired by a cooperative corporation or under section 213 (i) or (j) shall be the obligation of the Cooperative Management Housing Insurance Fund, where it has been insured pursuant to a commitment issued on or after August 10, 1965, or insured pursuant to a commitment issued prior to such date, and transferred to the Cooperative Management Housing Insurance Fund.

(b) A mortgage insured under section 213(a)(2) of the Act or under section 213(a)(3) where the project has not been acquired by a cooperative corporation shall be the obligation of the General Insurance Fund. A mortgage insured prior to August 10, 1965, or insured pursuant to a commitment issued prior to such date, where the project has not been transferred to the Cooperative Management Housing Insurance Fund, shall also be the obligation of the General Insurance Fund.

§ 213.267 Effect of insurance endorsement.

From the date of initial endorsement, the Commissioner and the mortgagee or lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

§ 213.268 Final insurance endorsement.

When all advances of mortgage or loan proceeds have been made and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he shall indicate on the original credit instrument the total of all advances he has approved for insurance and again endorse such instrument.

§ 213.269 Endorsement of supplementary loans.

The provisions of §§ 213.266, 213.267, and 213.268 shall apply to supplementary loans.

§ 213.270 Supplementary loans; election of action; claims; debentures.

(a) *Election of action.* Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgement, or any other security device has been used to secure the payment of a loan made under the provisions of this section, the lender may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

(b) *Maximum claim period.* Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

(c) *Items to be filed on submitting claim.* Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

(1) The fiscal data pertaining to the loan transaction;

(2) Receipts covering all disbursements as required by the fiscal data form;

(3) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments, are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(4) All hazard insurance policies held on property serving as security for the loan or other evidence of insurance coverage acceptable to the Commissioner, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security instrument;

(5) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default, and all claims of the lender against the borrower or others arising out of the loan transaction;

(6) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and the security instrument or instruments to the Commissioner;

(7) Any balance of the loan not advanced to the borrower;

(8) Any cash or property held by the lender or its agents or to which it is entitled; including deposits made for the account of the borrower and which have not been applied in reduction of the principal obligation under the note and security instrument or instruments;

(9) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(10) Any additional information or data which the Commissioner may require.

(d) *Claim computation.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in cash, in debentures or in a combination of both, as determined by the Commissioner at the time of payment. The payment shall be in an amount equal to the unpaid principal balance of the supplementary loan plus:

(1) Any accrued interest due on the supplementary loan as of the date of execution of its assignment to the Commissioner;

(2) Any advance made previously under the provisions of the loan instrument and approved by the Commissioner;

(3) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner;

(4) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such cash payment is made, except that when the lender fails to meet any one of the applicable requirements of paragraphs (b) and (c) of this section within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(e) *Debenture interest.* The debentures shall bear interest as provided in § 207.259(e)(6) of this chapter.

(f) *Maturity of debentures.* Debentures shall mature 20 years from the date of issue.

(g) *Registration of debentures.* Debentures shall be registered as to principal and interest.

(h) *Denomination of debentures.* Debentures shall be issued in multiples of $50 and any difference not in excess of $50 between the amount of debentures to which the lender is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the lender.

(i) *Redemption of debentures.* Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

(j) *Issue date of debentures.* The debentures shall be issued as of the date of the execution of the assignment of the supplementary loan in accordance with the requirements of paragraph (c)(3) of this section.

Cooperative Management Housing Insurance and Distributive Shares

§ 213.275 Nature of the Cooperative Management Housing Insurance Fund.

The Cooperative Management Housing Insurance Fund shall consist of the General Surplus Account and the Participating Reserve Account.

§ 213.276 Allocation of Cooperative Management Housing Insurance Fund income or losses.

For any semianual period in which Cooperative Management Housing Insurance Fund operations shall result in a net income, or loss, the Commissioner shall allocate such net income or such loss to the General Surplus Account, to the Participating Reserve Account, or to both, as he may determine to be in accordance with sound actuarial and accounting practice. In determining net income or loss, the Commissioner shall take into consideration all income received from fees, premiums, and earnings on investments of the Fund, operating expenses, and provision for losses of the Fund.

§ 213.277 Right and liability under the Cooperative Management Housing Insurance Fund.

No mortgagor or mortgagee shall have any vested right in a credit balance in either the General Surplus Account or the Participating Reserve Account. No mortgagor or mortgagee

shall be subject to any liability arising under the mutuality of the Cooperative Management Housing Insurance Fund.

§ 213.278 Distribution of distributive share.

When the contract of insurance is terminated by reason of payment in full of the mortgage or by voluntary termination approved by the Commissioner, and at such time or times prior to such termination as the Commissioner may approve, the Commissioner may distribute to a mortgagor under a mortgage that is the obligation of the Cooperative Management Housing Insurance Fund a share of the Participating Reserve Account in such manner and amount as he shall determine to be equitable and in accordance with sound actuarial and accounting practice.

§ 213.279 Maximum amount of distributive share.

In no event shall a distributive share of the Participating Reserve Account exceed the aggregate paid scheduled annual premiums of the mortgagor paid to the year of termination of the insurance or to the year of payment of the share, if paid prior to termination.

§ 213.280 Finality of determination.

The determination of the Commissioner as to the amount to be paid to any mortgagor from the Cooperative Management Housing Insurance Fund shall be final and conclusive.

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

Definitions

§ 213.501 Definitions.

(a) The term "project mortgage" means a blanket mortgage insured under section 213 of the Act, covering a group of not less than five single-family dwellings.

(b) The terms "mortgage" and "individual mortgage" means a mortgage covering an individual single-family dwelling which has been released from the project mortgage. The term "mortgage" is further defined at § 203.17(a)(1) of this chapter.

(c) The definitions contained in § 213.1 of this subchapter shall apply to this subpart.

[36 FR 24553, Dec. 22, 1971, as amended at 53 FR 34282, Sept. 6, 1988]

Approval of Mortgagees

§ 213.502 Qualification of lenders.

The provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Application and Commitment

§ 213.503 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage under this subpart.

§ 213.504 Form of application.

The application must be made upon a standard form prescribed by the Commissioner.

§ 213.505 Approval and commitment.

Upon approval of an application, acceptance of the mortgage for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the mortgage will be insured.

§ 213.506 Builder's warranty.

The seller or builder or such other person as the Commissioner may require shall, as a prerequisite to insurance, deliver to the purchaser a warranty in form satisfactory to the Commissioner warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Commissioner) on which the Commissioner has based the maximum insurable mortgage amount.

§ 213.506a Certificate of nondiscrimination by seller.

(a) An application for insurance involving the sale of a dwelling unit not

previously owner-occupied shall be accompanied by a certificate, in a form satisfactory to the Commissioner, signed by the seller establishing that such seller does not and will not discriminate in the sale of properties to prospective purchasers because of their race, color, creed or national origin.

(b) The provisions of paragraph (a) of this section shall not apply:

(1) Where the property involved is being released from a project for which preapplication analysis has been requested and the statement relating to nondiscrimination has been furnished as required by the provisions of § 200.320 of this chapter.

(2) Under such other circumstances as may be approved by the Commissioner.

(c) The provisions of this section shall be applicable to applications filed on or after November 1, 1963.

Eligible Mortgages

§ 213.507 Form, lien.

(a) *Mortgage form.* The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located. The mortgage shall be executed by a mortgagor who meets the qualifications set forth in this part.

(b) *Property standards.* The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

(c) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

[53 FR 34282, Sept. 6, 1988]

§ 213.508 Releases from project mortgage.

The property covered by the mortgage must have been included as part of a Sales Project and must have located thereon a single-family dwelling, and the mortgage must have been executed in connection with the release of such property from the lien of the project mortgage and to replace or refinance the project mortgage as to such property.

§ 213.509 Maximum amount of mortgage and mortgagor's minimum investment.

(a) The mortgage must involve a principal obligation in multiples of $50 and must not exceed the unpaid balance of the project mortgage allocable to the property offered as security.

(b) *Mortgagor's minimum investment.* At the time the mortgage is insured the mortgagor shall have paid on account of the property in cash or its equivalent, an amount, if any, approved and determined by the Commissioner to be the required minimum investment. The mortgagor's cash investment in the mortgagor corporation under the project mortgage may be credited against the amount required by this paragraph. If the mortgage covers property released from a Sales Project, the blanket mortgage of which was insured pursuant to an application received on or after July 5, 1961, the required minimum investment shall be at least 3 percent of the Commissioner's estimate of cost of acquisition or such larger amount as the Commissioner may determine.

§ 213.510 Mortgage maturity.

(a) *Maturity.* The mortgage shall have a maturity satisfactory to the Commissioner not to exceed 40 years from the date of the beginning of amortization, except where the mortgage covers property released from a sales project, the blanket mortgage of which was insured pursuant to an application received on or after July 5, 1961. In such instances, the maturity shall not exceed 30 years from the be-

ginning of amortization or 35 years from such date if the mortgagor is an owner occupant of the property and is not able, as determined by the Commissioner, to make the required payments under a mortgage having a shorter amortization period.

(b) The mortgage shall contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

[36 FR 24553, Dec. 22, 1971, as amended at 45 FR 29278, May 2, 1980; 48 FR 12085, Mar. 23, 1983]

§ 213.511 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

[36 FR 24553, Dec. 22, 1971, as amended at 49 FR 19458, May 8, 1984]

§ 213.512 Amortization provisions.

The mortgage must contain complete amoritzation provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor sufficient to repay principal and interest in full at maturity.

§ 213.513 Payment of insurance premiums or charges; prepayment privilege.

(a) *Payment of insurance premiums or charges.* The mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth (1/12) of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage may provide for a monthly payment by the mortgagor of an amount equal to one-twelfth (1/12) of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part on any installment due date, but shall not provide for the payment of any charge on account of such prepayment.

[37 FR 8663, Apr. 29, 1972, as amended at 50 FR 25915, June 24, 1985]

§ 213.514 Payments to include other charges.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize: (1) The ground rents, if any; (2) the estimated amount of all taxes; (3) special assessments, if any; (4) flood insurance premiums, if flood insurance is required by the Commissioner; and (5) fire and other hazard insurance premiums, within a period ending 1 month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner, for the purpose of paying such ground rents, taxes, assessments, and insurance premiums, before the same become delinquent, for the benefit and account of the mortgagor. The mortgage must also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

(b) The mortgagor shall not be required to pay premiums for fire or other hazard insurance which protects only the interests of the mortgagee, or for life or disability income insurance, or fees charged for obtaining information necessary for the payment of property taxes. The foregoing does not apply to charges made or penalties exacted by the taxing authority, except that a penalty assessed or interest charged by a taxing authority for failure to timely pay taxes or assessments shall not be charged by the mortgagee to the mortgagor if the mortgagee had sufficient funds in escrow for the account of the mortgagor to pay such taxes or assessments prior to the date

on which penalty or interest charges are imposed.

(c) Mortgages involving an original principal obligation not in excess of $9,000 may contain a provision requiring the mortgagor to pay to the mortgagee an annual service charge at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such service charge exceed one-half of one percent per annum. Any such service charge shall be payable in monthly installments on the principal then outstanding. The provisions of this paragraph shall not apply to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after July 17, 1961.

[36 FR 24553, Dec. 22, 1971, as amended at 37 FR 25231, Nov. 29, 1972; 42 FR 29303, June 8, 1977]

§ 213.515 Payments, how applied.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount of the payment shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the monthly payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance (including insurance charges for open-end advances), ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage; and

(4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

(b) Any deficiency in the amount of any such monthly payment, unless made good by the mortgagor on or before the due date of the next monthly payment, shall constitute an event of default under the mortgage.

[50 FR 25915, June 24, 1985]

§ 213.516 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed four percent of the amount of each payment more than 15 days in arrears, to cover servicing and other costs attributable to the receipt of payments from mortgagors after the date upon which payment is due.

[42 FR 29304, June 8, 1977]

§ 213.517 Payments upon execution of mortgage.

(a) The mortgagor must pay to the mortgagee, upon execution of the mortgage, a sum that will be sufficient to pay the ground rents, if any, the estimated taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums for the period beginning on the last date on which each such charge would have been paid under the normal lending practices of the lender and local custom (if each such date constitutes a prudent lending practice), and ending on the due date of the first full installment payment under the mortgage, plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment under the mortgage.

(b) The mortgagee may also collect from the mortgagor a sum not exceeding one-sixth of the estimated total amount of such taxes, special assessments, insurance premiums and other charges to be paid during the ensuing 12-month period.

[42 FR 29304, June 8, 1977]

§ 213.518 Charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20 or 1 percent of the original principal amount of the mortgage, which ever is the greater.

(2) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit report;
(iii) Survey, if required by mortgagee or mortgagor;
(iv) Title examination; title insurance, if any;
(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.
(3) Reasonable and customary charges in the nature of discounts.
(b) [Reserved]
(c) Before the insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in a form satisfactory to the Commissioner listing any charge, fee or discount collected by the mortgagee from the mortgagor. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.
(d) Nothing in this section will be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

[36 FR 24553, Dec. 22, 1971, as amended at 49 FR 19458, May 8, 1984]

§ 213.519 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8883, Mar. 18, 1988]

Eligible Mortgagors

§ 213.520 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that, after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.
(b) With the prior approval of the Commissioner, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien, held by a Federal, State, or local governmental agency or instrumentality provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Commissioner.
(c) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:
(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;
(2) Periodic payments, if any, shall be collected monthly and be substantially the same;
(3) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;
(4) The repayment terms shall not provide for a balloon payment before ten years, or for such other term as the Commissioner may approve, except that the mortgage may become due and payable on sale or refinancing of the secured property covered by the insured mortgage; and
(5) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.
(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it

is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iii) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment. Any full or partial prepayment is not recoverable by the mortgagor if, by application of paragraph (d)(1)(ii) on sale or refinancing of the property, a lesser amount than the amount prepaid would have been due.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

[45 FR 19223, Mar. 25, 1980, as amended at 50 FR 20906, June 24, 1985]

§ 213.521 Relationship of income to mortgage payments.

(a) Adequacy of mortgagor's gross income. A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet (1) the periodic payments required by the mortgage submitted for insurance and (2) other long-term obligations.

(b) *Stability of mortgagor's income.* Only that part of the mortgagor's income which can be expected to continue for approximately the first 5 years of the mortgage term will be considered effective income for the purpose of determining the adequacy of the mortgagor's income, as set forth in paragraph (a) of this section.

(c) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, source of income of the mortgagor or location of the property.

[37 FR 16391, Aug. 12, 1972, as amended at 54 FR 38649, Sept. 20, 1989]

§ 213.522 Credit standing; disclosure and verification of Social Security and Employer Identification Numbers.

(a) A mortgagor must have a general credit standing satisfactory to the Commissioner.

(b) To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0059 and 2502-0118)

[36 FR 24553, Dec. 22, 1971, as amended at 54 FR 39693, Sept. 27, 1989]

§ 213.523 Certificate of nondiscrimination by mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 213.524 Limitation on eligibility.

No person shall be eligible to be the mortgagor of more than one mortgage insured under this subpart at any one time, nor shall he be eligible if he is the mortgagor of a mortgage or mortgages covering four (4) or more single-family dwellings insured under this chapter.

Eligible Properties

§ 213.525 Nature of title to realty.

A mortgage, to be eligible for insurance, must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

[49 FR 21320, May 21, 1984]

§ 213.526 Dwelling unit located on property.

At the time a mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than one family. Such unit may be connected with other dwellings by a party wall or otherwise.

Open End Advances

§ 213.530 Eligibility of open end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open end" advances, in connection with the mortgages previously insured under this subpart or insured after the effective date of this part, subject to compliance with the requirements of this section:

(a) The proceeds of any open end advance must be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open end advances upon a standard form prescribed by the Commissioner.

(c) [Reserved]

(d) The mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in this part. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of such advance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open end advance shall:

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any such advance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided*, That if the mortgagor certifies that the proceeds of such open end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance

of the original principal obligation, plus the amount of the open end advance, may exceed the mount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of § 213.509.

(h) A mortgagee may amend or modify any mortgage meeting the requirements of § 213.507(a) of this chapter by adding such provisions as it deems necessary for the purposes of making open end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee will have the sole responsibility for determining that any mortgage amended by an "open end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

[36 FR 24553, Dec. 22, 1971, as amended at 45 FR 30603, May 8, 1980; 47 FR 29525, July 7, 1982; 53 FR 34282, Sept. 6, 1988]

§ 213.550 Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, construction, or purchase of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of low and moderate income.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 233(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

Waivers and Amendments

§ 213.748 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

§ 213.749 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart D—Contract Rights and Obligations—Individual Properties Released From Project Mortgage

§ 213.751 Cross-reference.

(a) *Definitions.* All of the definitions contained in § 213.1 shall apply to this subpart.

(b) *Other provisions.* All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 213 of the Nation-

al Housing Act except the following provisions:

Sec.
203.259a Scope.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.439 Mortgages insured on Hawaiian home lands pursuant to section 247 of the National Housing Act.
203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.
203.440—203.493, inclusive.

(c) *References.* For the purpose of this subpart, all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 213 of the Act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24553, Dec. 22, 1971, as amended at 48 FR 28807, June 23, 1983; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48203, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

Subpart E—Servicing Responsibilities—Individual Properties Released From Project Mortgage

§ 213.800 Cross reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act shall apply to mortgages insured under section 213 of the National Housing Act, except §§ 203.665 and 203.666.

[52 FR 48203, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 215—RENT SUPPLEMENT PAYMENTS

Sec.
215.1 Definitions.
215.5 Scope of rent supplement assistance.
215.10 Projects eligible for benefits.
215.15 Eligible housing owner.
215.20 Qualified tenant.
215.21 Annual income.
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215.35 Term of contract.
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215.45 Maximum payment under contract for each tenant.
215.50 Time of payment under contract.
215.55 Reexamination of family income and composition.
215.56 Transition provision.
215.60 Hardship cases.
215.65 Tenant occupancy limitations.
215.70 Form of lease.
215.75 Housing owner's obligation under contract to report tenant income increase.
215.90 Contract amendments.

AUTHORITY: Sec. 101(g), HUD Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Depart. of HUD Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24571, Dec. 22, 1971, unless otherwise noted.

§ 215.1 Definitions.

Act. The Housing and Urban Development Act of 1965.

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent,

(b) $400 for any Elderly Family.

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as a result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family.

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by

which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) Child Care Expenses.

Annual Income. See § 215.21.

Child Care Expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member who is 18 years of age or older to be gainfully employed or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of Annual Income received from such employment.

Commissioner. The Federal Housing Commissioner or his or her authorized representative.

Contract Rent. The total monthly amount of rent approved by HUD in the project rent schedule as payable by HUD and the tenant to the owner for an assisted unit, i.e., the Rent Supplement Unit Rent.

Dependent. A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or a Full-time Student.

Dilapidated housing. A housing unit that does not provide a safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of the occupants. Such a housing unit shall have one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. Such defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

Disabled person. A person under a disability, as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(1)).

Displacee. A person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

Elderly Family. A family whose head or spouse (or sole member) is an Elderly, Disabled or Handicapped Person. It may include two or more Elderly, Disabled or Handicapped Persons living together, or one or more of these persons living with one or more Live-in Aides.

Elderly person. A person who is at least 62 years of age.

Family. Two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling unit.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Gross rent. The total monthly cost of housing a Qualified Tenant, which is the sum of the Contract Rent and any Utility Allowance for the assisted unit.

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member)

to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

Handicapped person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Live-in aide. A person who resides with an Elderly, Disabled, or Handicapped Person or Persons and who (a) is determined to be essential to the care and well-being of the Person(s); (b) is not obligated for the support of the Person(s); and (c) would not be living in the unit except to provide the necessary supportive services. (See § 215.21(c) for treatment of a Live-in Aide's income.)

Medical expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

Net Family Assets. Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity in a housing cooperative unit in which the family resides. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of any member of the family, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining Annual Income.) In determining Net Family Assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Qualified Tenant. See § 215.20.

Secretary. The Secretary of Housing and Urban Development or the Secretary's authorized representative.

Substandard Housing. A unit that is either Dilapidated Housing or does not have one of the following plumbing facilities:

(a) Hot and cold piped water inside the unit.

(b) Usable flush toilet inside the structure for the exclusive use of the occupants of the unit.

(c) Usable bathtub or shower inside the structure for the exclusive use of the occupants of the units.

Tenant Rent. The amount payable monthly by the Qualified Tenant as rent to the owner. Where all utilities (except telephone) and other essential housing services are supplied by the owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance.

Total Tenant Payment. The portion of the Gross Rent payable by a Qualified Tenant, determined in accordance with § 215.45.

Utility Allowance. If the cost of utilities (except telephone) and other essential housing services for an assisted unit is not included in the rent paid to the housing owner but is the responsibility of the tenant occupying the unit, an amount equal to the estimate approved by HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Utility reimbursement. The amount, if any, by which the Utility Allowance

exceeds the Family's Total Tenant Payment.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

[51 FR 21853, June 16, 1986; 51 FR 24324, July 3, 1986, as amended at 52 FR 34112, Sept. 9, 1987]

§ 215.5 Scope of rent supplement assistance.

The Commissioner may enter into a rent supplement contract with the owner of specific types of multifamily housing projects for payment of a portion of the rent on behalf of qualified tenants. The conditions of eligibility for such a contract and its terms are specified in this part.

§ 215.10 Projects eligible for benefits.

(a) Rent supplement payments shall be made available in connection with multifamily projects which involve:

(1) New construction,

(2) Major rehabilitation of existing structures,

(3) Existing structures financed by a state or local program providing assistance through loans, loan insurance or tax abatements,

(4) Existing structures which are sold by the Secretary, if rent supplement payments had been made in connection with the structures before acquisition by the Secretary and provided that the rent supplement assistance shall be limited to the maximum amount set forth in the original rent supplement contract,

(5) Existing structures on which there is a mortgage insured under section 236 of the National Housing Act,

(6) Existing structures which are acquired and sold by the Secretary, if the sale is financed by a mortgage insured under section 221(d)(3) or section 236 of the National Housing Act, and, after acquisition by the Secretary, there is major rehabilitation of the structure, or

(7) On an experimental basis, existing structures in connection with certain housing projects for the elderly.

(b) The Commissioner may make rent supplement payments with respect to projects in which dwelling units do not contain kitchen facilities.

[36 FR 24571, Dec. 22, 1971, as amended at 37 FR 12231, June 21, 1972; 49 FR 29586, July 23, 1984; 51 FR 21855, June 16, 1986]

§ 215.15 Eligible housing owner.

(a) To be eligible to receive rent supplement payments, the owner of the multifamily project shall be a nonprofit, limited distribution, or cooperative mortgagor. The project shall be financed in one of the following ways:

(1) By a mortgage bearing interest at the market rate prescribed in § 221.518(a) of this title and insured under section 221(d)(3) of the National Housing Act (or insured under section 233 of such Act pursuant to section 221(d)(3)). Such mortgage shall be insured pursuant to an insurance commitment issued after August 10, 1965.

(2) By a state or local program providing assistance through loans, loan insurance, or tax abatements, if the project is approved by the Commissioner for receiving rent supplement payments.

(b) The Commissioner may, on an experimental basis, enter into a limited number of rent supplement contracts with the following types of housing owners:

(1) A nonprofit, limited distribution, or cooperative mortgagor under a mortgage bearing interest at the below market rate prescribed in § 221.518(b) of this title. Such project must be insured pursuant to a commitment issued after August 10, 1965 for the insurance of a mortgage under section 221(d)(3) of the National Housing Act (or insured under section 233 of such Act pursuant to section 221(d)(3).

(2) A private nonprofit mortgagor under a mortgage insured pursuant to section 231(c)(3) of the National Housing Act (or insured under section 233 of such Act pursuant to section 231(c)(3)) which is approved for receiving the benefits provided in this part and finally endorsed for insurance after August 10, 1965.

(3) A private nonprofit corporation, a public body or agency, or a cooperative housing corporation which is a borrower under section 202 of the Housing Act of 1959 and has been ap-

proved for receiving the benefits provided in this part.

(4) A nonprofit, limited distribution, or cooperative mortgagor under a mortgage insured pursuant to section 236 of the National Housing Act (or insured under section 233 of such Act pursuant to section 236(j)(1)) which is receiving interest reduction payments pursuant to section 236 of the Act and is approved for receiving the benefits provided in this part.

(c) A housing owner qualifying under the provisions of paragraph (a) or (b) of this section shall only be eligible for rent supplement payments if:

(1) The dwelling unit or project is part of a workable program for community improvements meeting the requirements of section 101(c) of the Housing Act of 1949; or

(2) The dwelling unit or project receives local official approval for participation in the Federal rent supplement program.

(d) To be eligible to receive rent supplement payments, the housing owner must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0118)

[36 FR 24571, Dec. 22, 1971, as amended at 54 FR 39694, Sept. 27, 1989]

§ 215.20 Qualified tenant.

(a)(1) An individual or family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent of the median for the area on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

(2) An individual or family who was a qualified tenant under the Rent Supplement Program pursuant to Section 101 of the Housing and Urban Development Act of 1965, on the day preceding the effective date of the publication of this rule.

(b)(1) The benefits of the rent supplement payments are available only to an individual or a family renting a dwelling unit in a project owned by an eligible housing owner or occupying such a dwelling unit as a cooperative member.

(2) For requirements covering the disclosure and verification of Social Security Numbers by individuals and families, see part 200, subpart T, of this chapter.

(3) No rent supplement shall be offered where the amount of the assistance at admission would be less than 10 percent of the approved rent. The rent supplement payment shall not, regardless of the tenant's income, exceed 70 percent of the approved rent for the unit.

(c) Whenever the Commissioner determines that a project, because of its location or other considerations, could ordinarily be expected to substantially serve the family needs of military personnel who are serving on active duty and who meet the income requirements established by the Commissioner, such preference for occupancy shall be afforded to the family of such military personnel as the Commissioner determines is appropriate.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0118)

[45 FR 59146, Sept. 8, 1980, as amended at 46 FR 56422, Nov. 17, 1981; 49 FR 29586, July 23, 1984; 53 FR 846, Jan. 13, 1988; 54 FR 39694, Sept. 27, 1989]

§ 215.21 Annual income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

(b) Annual Income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips

and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (but see paragraph (c)(7) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 215.1;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the

student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 101 of the Housing and Urban Development Act of 1965. A notice will be published in the FEDERAL REGISTER and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) If it is not feasible to anticipate a level of income over a 12-month period, the income for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

[51 FR 21855, June 16, 1986, as amended at 52 FR 34112, Sept. 9, 1987]

§ 215.22 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. Only qualified tenants, as defined in § 215.20, are eligible to receive a preference.

(2)(i) The housing owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include those on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the housing owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would qualify for admission to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection policies. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section and other applicable requirements (including applicable limitations on the use of local

residency requirements and preferences).

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101-07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the owner may implement the system.

(5) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section, or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for preferred status under paragraph (c)(1) of this section. An owner must accept this certification, unless the

owner verifies that the applicant is not qualified for preferred status.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change for one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or under this part with respect to the unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for

an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or famly who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilitites (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is one twelfth of Annual Income, as determined in accordance with § 215.21.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers:

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the avarage monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the provisions of this part and applicable HUD handbook provisions.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's administrative instructions. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the housing owner may not be accepting additional applications for assistance under this part because of the length of any waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance under this part and claims that he or she qualifies for a Federal preference as provided in paragraph (c)(2) of this section, unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(1) There is an adequate pool of applicants on the list who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(m) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

[53 FR 1142, Jan. 15, 1988, and 53 FR 6601, Mar. 2, 1988, as amended at 53 FR 15820, May 4, 1988]

§ 215.25 Determination of eligibility.

(a)(1) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner will determine eligibility following procedures prescribed by the Commissioner.

(2) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(i) First: Applicants eligible for Rent Supplement;

(ii) Second: Applicants eligible to pay a below market rent under a project-based subsidy, if applicable (e.g., section 236 or section 221(d)(3) BMIR);

(iii) Third: Applicants who can pay the Market Rent.

(3) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under a project-based subsidy program are already occupied by tenants paying Market Rent.

(4) Before admitting an applicant who will not receive the benefit of Rent Supplement assistance, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the Rent Supplement contract are al-

ready occupied by tenants receiving such assistance.

(5) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (a)(2) through (a)(4) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(b) The Commissioner may approve a qualified tenant as a lessee under an option to purchase a dwelling at a stipulated price, if it is determined that the tenant will be able to finance such purchase on the basis of the probability of future increases in the tenant's income.

(Information collection requirements contained in paragraph (a) are approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

[48 FR 13979, Apr. 1, 1983, as amended at 51 FR 21856, June 16, 1986]

§ 215.30 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rent supplement payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rent supplement payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Commissioner.

(b) The term "tenant" as used in this section shall mean a member of a cooperative, and the term "rent" shall mean the charges under the occupancy agreement between the members of the cooperative.

§ 215.35 Term of contract.

The rent supplement contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

§ 215.40 Maximum annual project payments under contract.

The rent supplement contract shall state the maximum dollar amount of the rent supplement payments for any 1 year based upon the Commissioner's estimate of probable effective demand and distribution of tenant income, including a 10-percent contingency allowance. At the end of such period of time as the Commissioner may prescribe for the rental of the dwelling units, appropriate adjustment shall be made in the maximum rental payments, including a 10-percent contingency allowance, to reflect the actual requirements of the tenants. Payments shall not be made with respect to more than 20 percent of the number of dwelling units in any project which is assisted under:

(a) Section 202 of the Housing Act of 1959, if the loan agreement under that section was entered into on or before August 10, 1965; or

(b) [Reserved]

(c) Section 236 of the National Housing Act, except that the Commissioner may increase to 40 percent the limitation on the number of dwelling units in any section 236 project eligible for rent supplement payments, where he determines that such increase is necessary to provide additional housing for lower income families.

[36 FR 24571, Dec. 22, 1971, as amended at 37 FR 4257, Mar. 1, 1972]

§ 215.45 Maximum payment under contract for each tenant.

(a) *Amount of assistance.* The rent supplement contract shall provide that the payment on behalf of a qualified tenant shall be that amount by which the Gross Rent for the unit exceeds the Total Tenant Payment, determined in accordance with paragraphs (b) or (c) and (d) of this section.

(b) *Total tenant payment for qualified tenants whose initial lease is effective on or after May 1, 1983.* The Total Tenant Payment rounded to the nearest dollar, shall be the greater of:

(1) 30 percent of one-twelfth of the tenant's Adjusted Income; or

(2) 30 percent of the Gross Rent for the unit.

(c) *Total tenant payment for qualified tenants whose initial lease was effective before May 1, 1983.* The Total Tenant Payment shall be calculated in accordance with paragraph (b) of this section, except that the percentage of income utilized in paragraph (b)(1) of this section, shall be in accord with the following table:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special conditions.* (1) For purposes of this section, a family is considered to be a Qualified Tenant whose initial lease was effective before May 1, 1983 only if the family resided on April 30, 1983 in a unit under lease with assistance under the Rent Supplement Program or the Rental Assistance Program, and its assistance under those programs has been continuous thereafter; or the family resided on July 31, 1982 in a unit with the benefit of Section 8 Housing Assistance Payments, and its participation in the Section 8, Rent Supplement or the Rental Assistance Payments has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit within the same project.

(2) So long as a Qualified Tenant whose initial lease was effective before May 1, 1983 continues to receive assistance in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of: (i) Application of the percentages in paragraph (c) of this section; (ii) application of the changes in the definitions contained in §§ 215.1 and 215.21 from definitions of comparable terms in regulations in effect immediately before October 1, 1984 and (iii) application of the new annual reexamination requirement in § 215.55 for assisted tenants at least 62 years of age.

(3) So long as a Qualified Tenant whose initial lease was effective on or after May 1, 1983 but which was in occupancy on September 30, 1984, continues to receive assistance in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of (i) application of the changes in the definitions contained in §§ 215.1 and 215.21 from definitions of comparable terms in regulations in effect immediately before October 1, 1984; and (ii) application of the new annual reexamination requirement in § 215.55 for assisted tenants at least 62 years of age.

(4) For the purpose of paragraphs (d) (1) through (3) of this section, the "same project" includes units in buildings located on adjacent sites that are managed as one project.

(5) The limitations contained in paragraphs (d) (2) through (3) of this section do not apply to portions of increases in Total Tenant Payment that are attributable to increases in the Contract Rent or decreases in the Utility Allowance for the unit or to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in paragraphs (d) (2) through (3) of this section.

(6) In order to facilitate administration of the limitations provided in paragraphs (d) (2) through (3) of this section, upon any regular or interim reexamination of a tenant who was in occupancy on September 30, 1984, the owner shall continue to collect and verify information that would have been taken into account in calculating Annual Income and Adjusted Income as defined in regulations in effect immediately before October 1, 1984, as if such regulations were in effect at the date of such reexamination.

(7) The limitations prescribed in paragraphs (d) (2) through (3) of this section shall be applied in accordance with procedures prescribed by HUD.

(e) *Utility reimbursement.* Where applicable, the Utility Reimbursement shall be paid to the Qualified Tenant. If the tenant and utility company consent, the owner may pay the Utility Reimbursement jointly to the Qualified Tenant and the utility company, or directly to the utility company.

(f) *Adjustment in Utility Allowances.* When the project owner requests HUD approval of a rent increase, an

analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption must be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances. (See 24 CFR Part 245 for the procedure for tenant comment in the rent increase process, which includes changes in the Utility Allowances.)

(g) *Application of terms.* In the case of a cooperative project, the term Contract Rent as used in this part shall mean the charges under the occupancy agreement of members of the cooperative.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0352 and 2502-0354)

[51 FR 21856, June 16, 1986]

§ 215.50 Time of payment under contract.

The rent supplement contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility.

§ 215.55 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with § 215.45 and determine whether the family's unit size is still appropriate. The owner must adjust the Tenant Rent and the Rent Supplement payments to reflect any change in the Total Tenant Payment, and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the Qualified Tenant to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T of this chapter.

(b) *Interim reexaminations.* The Qualified Tenant must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled income reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and the Rent Supplement Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(c) *Termination of assistance.* A Qualified Tenant's eligibility for Rent Supplement Payments continues until the Total Tenant Payment equals the Gross Rent. The rent charged at that point may not exceed the market rent approved by the Secretary. The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the contract. However, assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements, including the failure of the Qualified Tenant to meet the disclosure and verification requirements for Social Security Members, as provided by part 200, subpart T of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0118)

[54 FR 39694, Sept. 27, 1989]

§ 215.56 Transition provision.

(a) *Admissions and reexaminations effective on or after August 1, 1985.* A

regular and interim reexaminations and examinations for admission that are to be effective on or after August 1, 1985, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55.

(b) *Optional interim reexamination.* To expedite use of the new calculations, each owner shall have the right, at its discretion, to require any Qualified Tenant who paid an assisted rent on or after October 1, 1984, that was based on the rule in effect before October 1, 1984, to undergo an interim reexamination and determination of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, in accordance with the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, before the next regularly scheduled reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants, other than those whose examination for admission was based on the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, or who paid 30 percent of Gross Rent, the owner shall make an additional calculation, at the first reexamination using the revised rule, with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Total Tenant Payment shall be calculated for such period, in accordance with HUD adminstrative instructions, on the basis of:

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 215.1;

(3) Medical Expenses and Handicapped Assistance Expenses as prescribed in the definition of Adjusted Income in § 215.1;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 215.1; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted Income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual adjustments.* (1) If the adjusted monthly Total Tenant Payment calculated under paragraph (c) of this section is higher than or equal to the actual monthly Total Tenant Payment for the applicable period, no adjustment shall be made. If the adjusted monthly Total Tenant Payment calculated under paragraph (c) of this section is lower than the actual monthly Total Tenant Payment for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining balance is the amount due the tenant. This amount due the tenant may be paid to the tenant; or it may be applied as a credit to the Tenant Rent due immediately after the effective date of the reexamination; or, if the amount due to a tenant exceeds 25 percent of the Total Tenant Payment due from such tenant, it may be applied as a credit in not more than four installments, as provided in HUD administrative instructions.

(2) If a Qualified Tenant vacates a unit on or after October 1, 1984, and before the first reexamination based on the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after the owner sends the notice) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amount due from the tenant to

the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, HUD will follow regular procedures appropriate to the circumstances.

[51 FR 21857, June 16, 1986]

§ 215.60 Hardship cases.

Where a tenant's income has decreased due to illness, loss of job, or other hardship beyond his control, the Commissioner may grant a temporary increase in rent supplement payments.

§ 215.65 Tenant occupancy limitations.

Qualified tenants shall not be permitted to occupy units larger than the Commissioner determines necessary for their needs.

§ 215.70 Form of lease.

(a) *Lease form.* Qualified tenants shall be required to execute a lease in a form approved by the Commissioner.

(b) *Prohibited lease provisions.* Lease clauses of the nature described below shall not be included in new leases and shall be deleted from existing leases either by amendment thereto or by execution of a new lease:

(1) *Confession of judgment.* Prior consent by the tenant:

(i) To any lawsuit the landlord may bring against the tenant in connection with the lease; and

(ii) To a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before an action for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right:

(i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents; or

(ii) To file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

[51 FR 21858, June 16, 1986; 51 FR 24324, July 3, 1986]

§ 215.75 Housing owner's obligation under contract to report tenant income increase.

The rent supplement contract shall contain a provision obligating the housing owner to notify the Commissioner upon verifying a report of an increase in the tenant's income resulting in the tenant's ability to pay the full monthly rental or an increased monthly payment for the housing unit with the amount the tenant is required to pay for rent, in accordance with § 214.45. The contract shall also obli-

gate the housing owner, upon failing to notify the Commissioner when a report of such increase in income is received from a tenant, to reimburse the Commissioner for any rent supplement payments made during the period after receipt of such report when the tenant is receiving the increased income.

[48 FR 13980, Apr. 1, 1983, as amended at 51 FR 21858, June 16, 1986]

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

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AUTHORITY: Sec. 201, Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1a; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 54 FR 9713, Mar. 7, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 219.101 Purpose.

The purposes of the Flexible Subsidy program are to provide assistance to restore or maintain the financial soundness; to assist in the improvement of the management; to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing; and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act, the United States Housing Act of 1937, the Housing Act of 1959, or the Housing and Urban Development Act of 1965, without regard to whether such projects are subject to insured financing under the National Housing Act.

§ 219.105 Types of projects.

The types of rental or cooperative housing projects that may be eligible for assistance under this part include only the following types of projects:

(a) A project assisted under the section 236 Interest Reduction program, the section 221(d)(5) program (commonly known as the 221(d)(3) Below Market Interest Rate program), or the Rent Supplement program;

(b) A project that was constructed more than 15 years before assistance is to be provided under this part with a loan under the section 202 program for Housing for the Elderly or Handicapped;

(c) A project assisted under section 23 of the United States Housing Act of 1937 (1937 Act), as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act;

(d) A project assisted under the Section 8 Housing Assistance Payments program after conversion from assistance under the Section 236 Rental Assistance Payments program or the Rent Supplement program; or

(e) A project that met the criteria in paragraph (a) or (b) before acquisition by the Secretary and that has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this part) that provides that the low- and moderate-income character of the project will be maintained; except that with respect to any project sold after October 1, 1978, operating assistance under Subpart B

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shall be available for a period not to exceed three years.

§ 219.110 General eligibility.

Assistance under this subpart may not be made available unless the Secretary has determined that:

(a) This assistance, when considered with other resources available to the project, is necessary, will restore or maintain the financial or physical soundness of the project and maintain the low- and moderate-income character of the project. "Other resources" include but are not limited to mortgage modification agreements, owner contributions, and assistance from State or local programs;

(b) The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage;

(c) This assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives by which the Secretary could maintain the low- and moderate-income character of the project;

(d) The project owner, together with the mortgagee in the case of projects not insured under the National Housing Act, has provided or agreed to provide assistance to the project in a manner as determined by the Secretary in accordance with §§ 219.205(b) and 219.305(c);

(e) The project is, or can reasonably be made, structurally sound, as determined from information resulting from an on-site inspection of the project;

(f) Project management is being conducted by persons who meet satisfactory levels of competency and experience as determined by the Secretary in the management review process; and

(g) The project is being operated and managed in accordance with a management improvement and operating (MIO) plan that is designed to reduce the operating costs of the project and that has been approved by the Secretary—except for a project for which the only assistance provided under this part is for capital improvements under Subpart C. (See § 219.310(b).)

§ 219.115 Flexible subsidy fund.

(a) The Flexible Subsidy Fund is a revolving fund established in the Treasury of the United States that is available to the Secretary, to the extent approved in appropriation Acts, to provide assistance under this part.

(b) The Fund consists of the following:

(1) Any amount appropriated to carry out the purposes of this part;

(2) Any amount repaid on any assistance provided under this part;

(3) Any amounts credited to the Section 236 program excess rental receipts fund; and

(4) Any amount received by the Secretary under this program, including any interest on investment of funds as described in paragraph (c) of this section.

(c) Any amounts in the Fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of this part shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(d) At the beginning of each fiscal year, funds are allocated for two categories of projects: State agency financed non-insured projects; and all others, including projects with FHA-insured and HUD-held mortgages. Each category is allocated an amount based on the number of units in potentially eligible projects of that category as a percentage of the total number of units in all potentially eligible projects. Once these two funding categories are established, each category will be administered to comply with the statutory requirement concerning spending for the capital improvement loan program enumerated in paragraph (e) of this section, by spending 40 percent of its allocation, or its share of the stated dollar amount (whichever is less), to the extent of approvable applications.

(e) The Secretary will use not less than $30 million, or 40 percent of the amounts available in the Fund (subject to paragraph (a) of this section) in any fiscal year (whichever is less), for purposes of providing capital improve-

ment loans under Subpart C of this part, to the extent of approvable applications. If any of the amounts reserved for capital improvement loans remains unused 60 days before the end of a fiscal year, it will become available for operating assistance under Subpart B.

(f) Funding decisions are made on a quarterly basis using the applicable priorities enumerated in Subparts B and C. As the end of each fiscal year approaches, HUD will determine to what extent there are funds required to be used for capital improvement loans (under paragraph (e) of this section) that are allocated for one of the two major categories (described in paragraph (d) of this section) but are unlikely to be used by projects of that category. In the last quarter, to the extent there is to be an excess in either of the categories for capital improvement loans that could be used for such loans to eligible applicants of the other category, the funds will be reallocated.

§ 219.120 Local government consultation.

The Secretary, before making assistance available to a project, will consult with the appropriate officials of the unit of local government in which the project is located and seek the following assurances:

(a) The community in which the project is located is providing, or will provide, essential services to the project in keeping with the community's general level of these services;

(b) The real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(c) Assistance to the project under this part would not be inconsistent with local plans and priorities.
§ 219.125 Environmental requirements.

§ 219.125 Environmental requirements.

In order to be approved for funding under this part, an application for assistance to cover a capital improvement, as defined in § 219.305, will be reviewed for compliance with applicable environmental requirements, as follows.

(a) If the proposed capital improvements involve major mechanical systems, HUD will determine whether the project is located in a 100-year floodplain and if so, will take all feasible actions to minimize the impact of flooding on the mechanical systems.

(b) If a project is listed on the National Register of Historic Places, the proposed use of funds will be reviewed for compliance with the National Historic Preservation Act of 1966. As a general rule, in-kind replacements will not trigger review under the Act. If the project is not listed on the National Register but is located in a historic district, review under the Act will only be required where there are proposed alterations to the exterior that are not in-kind.

§ 219.130 Waivers.

Upon a determination of good cause, the Secretary of Housing and Urban Development may, subject to statutory limitations, waive any provision of this part. Each such waiver will be in writing and will be supported by documentation of the pertinent facts and grounds.

Subpart B—Operating Assistance

§ 219.205 Amount of operating assistance.

(a) The Secretary will provide the initial and subsequent operating assistance to permit the project to attain and maintain financial soundness, in an amount that is consistent with the project's MIO plan, subject to the availability of funds, as described in § 219.115, but the amount provided will not exceed the sum of the following:

(1) An amount determined by the Secretary to be necessary to correct project deficiencies existing at the beginning of the first year of assistance that were caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project. A repair or replacement item is only eligible under this program if no previous payment of HUD-related assistance (such as assistance under this part, Housing Development

Grant, or Community Development Block Grant) has been made. A capital improvement (as described in § 219.305(a)) is eligible for funding as part of operating assistance only if it is necessary to meet local building codes or to maintain the project in a decent, safe and sanitary condition and the Secretary determines that this method of funding the improvement is the most efficient;

(2) An amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies (which exist at the beginning of the first year of assistance and for which payment has not previously been made) in the reserve fund established by the project owner for the purpose of replacing capital items;

(3) An amount not greater than the amount by which the estimated operating expenses for the year for which assistance is made available exceeds the estimated revenues to be received by the project during that year, as determined in accordance with § 219.210; and

(4) An amount determined by the Secretary to be necessary to carry out a plan to upgrade the project to meet cost-effective energy efficiency standards approved by the Secretary.

(b) The owner must provide assistance to the project.

(1) Generally, an owner must make a cash contribution toward the amount needed to render the project financially sound. Cash that has already been agreed to be contributed to the project as a condition for approval of purchase of the project (TPA) will not be considered for this purpose. Cash contributions by the owner within the 24 months before application for operating assistance under this Subpart from sources other than project income may be considered.

(2) A non-profit owner may be permitted to contribute to the project in the form of services, if HUD determines that neither the mortgagor nor the sponsor has the financial capacity to make a cash contribution.

§ 219.210 Application.

(a) The project owner must submit an application on a form approved by the Secretary.

(b) The application will include a MIO plan that includes the following:

(1) A detailed maintenance schedule;

(2) A schedule for correcting past deficiencies in maintenance, repairs and replacements;

(3) A plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD;

(4) A plan to improve financial and management control systems;

(5) An updated annual operating budget, if the last budget was submitted more than 90 days before the application is submitted; and

(6) A plan setting forth the specific controls and procedures that will result in a reduction in operating costs, if possible, together with an estimate of the cost saving.

(c) The application will include documentation of eligibility, as described in § 219.110.

(Approved by the Office of Management and Budget under control number 2502-0395)

[54 FR 9713, Mar. 7, 1989, as amended at 54 FR 49279, Nov. 30, 1989]

§ 219.215 Estimating project revenue and operating expenses.

(a) *Computing estimated project revenue.* The estimated revenue for a project with respect to any year is equal to the sum of the following:

(1) The estimated amount of rent that is to be paid by the tenants of the project during the year (without regard, in the section 236 Interest Reduction program, to whether the owner has established and is collecting a "basic rent", as defined in § 236.2), in accordance with the following:

(i) The rent being paid or projected to be paid at the time project revenue is estimated; but at least 30 percent of the adjusted income of each tenant, or, in the case of a tenant paying his or her own utilities, a percentage of income that is less than 30 percent and that takes into account the reasonable costs of utilities. Percentages of adjusted income, as defined in 24 CFR Part 813, can be based on the

most recent tenant income certification. In no case will the amount used for this estimate exceed the HUD-approved rent for the project.

(ii) A vacancy allowance may be used in developing the estimated revenue for non-insured projects and HUD-held projects. This allowance may not exceed 6 percent of the rental payments otherwise to be anticipated, unless the Secretary permits a higher allowance for the first three years in which assistance is to be provided to a project under this subpart because the higher allowance is necessary to carry out the purposes of this subpart.

(2) The estimated amount of assistance payments to be made on behalf of the tenants during the year other than assistance made under this subpart; and

(3) Other income attributable to the project as determined by the Secretary, such as, commercial rental income, tax rebates or refunds, condemnation or insurance award proceeds.

(b) *Computing estimated project operating expenses.* The estimated operating expenses of any project with respect to any year shall include all estimated operating costs that the Secretary determines to be necessary and consistent with the MIO plan for the project for the year. Such costs include, but are not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs that should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The estimated operating expenses may not include any return on the equity investment of the owner.

§ 219.220 Payment and repayment of operating assistance.

(a) *Basic for payment.* Assistance payments will be computed on an annual basis in accordance with § 219.205, payable at least quarterly, after the amount payable from the reserve for replacements (if any) and the owner contribution payable as part of the approved plan have been exhausted. At the time of each payment, the operations of the project will be reviewed by the Secretary to determine that they are consistent with the MIO plan. Continued payments will be contingent upon satisfactory performance.

(b) *Basis for repayment of assistance.* Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, or prepayment of the mortgage.

(Approved by the Office of Management and Budget under control number 2502-0395)

[54 FR 9713, Mar. 7, 1989, as amended at 54 FR 49279, Nov. 30, 1989]

§ 219.225 Effect of assistance on rent increase approvals.

To assure that projects eligible for assistance under this part restrain costs in every way possible, including by using assistance under this part to upgrade capital items to meet cost-effective energy efficiency standards, the Secretary will consider, as part of the rent increase approval process under Part 245, whether the project owner could control increases in utility costs by securing more favorable utility rates, by undertaking energy conservation measures that are financially feasible and cost effective, or by taking other financially feasible and cost-effective actions to increase energy efficiency or to reduce energy consumption. Where the Secretary determines that the owner could exercise such control, the amount of a proposed rent increase may be adjusted to reflect the estimated savings that could be attained.

§ 219.230 Priorities for funding.

HUD will give funding priority to projects presently experiencing financial and management problems where conditions can be stabilized by the provision of assistance under this subpart. To the extent that funds remain available, assistance may be provided to projects that, on the basis of a financial and management analysis, appear to have a high probability of having financial and management problems within approximately the

next five years, and that satisfy the eligibility requirements of § 219.110.

Subpart C—Capital Improvement Loans

§ 219.305 Eligibility.

(a) Assistance is available under this subpart for capital improvements. For purposes of this subpart, "capital improvements" include any major repair or replacement of building components: *i.e.*, roof structures, ceiling, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, including any major repair or replacement of any short-lived building component or equipment before the expiration of its useful life. Capital improvements also may include limited supplements or enhancements to mechanical equipment needed for health and safety of the residents, such as air conditioning, heating equipment, or water softeners, where they do not exist. Capital improvements do not include maintenance of any such item.

(b) Assistance under this subpart will be in the form of a loan. The Secretary will provide this assistance only if the Secretary determines that the owner's reserve for replacements (including any surplus cash, residual receipts or other funds from the project account or escrow outside the project account that could be used to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months, as described in the owner's work write-up (submitted as part of the application), and that the owner has funded the reserve fund in accordance with HUD requirements. An owner's reserve for replacements may only be tapped to cover needed capital improvements if the reserve exceeds $1,000 per unit, and then only to the extent of depleting it by up to 50 percent of the amount over $1,000 per unit on the date the capital improvement loan is made.

(c) An owner must contribute 25 percent of the total estimated cost of the capital improvements involved, unless the owner is a nonprofit corporation (other than a cooperative association), in which case it is exempt from this contribution requirement. The total estimated cost of the capital improvements includes the cost of the estimate of work, the cost of materials, and the cost of labor. This estimate must be approved by HUD as cost effective.

(1) The contribution must be made in cash. It must not be taken from project income, but may be taken from surplus cash (as defined in the Regulatory Agreement) from the project.

(2) Cash that has already been agreed to be contributed to the project as a condition for receiving operating assistance or approval of purchase of the project (TPA) will not be considered for purposes of meeting this contribution requirement.

(3) When an owner has spent its own money (as from surplus cash) to attempt to repair capital items within the 24 months before the application, and the repair was unsuccessful and has resulted in a need for a replacement (to be funded by a capital improvement loan), that expenditure will be considered for credit for purposes of meeting this contribution requirement.

§ 219.310 Application.

(a) A project owner must submit an application on a form approved by the Secretary, which will include a work write-up to describe the capital improvements to be covered by the requested loan (see § 219.315), and other documentation of eligibility, as described in §§ 219.110 and 219.305.

(b) The application must be accompanied by a MIO plan only in the following cases:

(1) A default under the mortgage;

(2) A violation of the fiscal requirements or property maintenance requirements of the regulatory agreement (for other than willful or fraudulent reasons);

(3) An unsatisfactory or marginally satisfactory management review in the past 24 months (unless the owner has corrected the problems through a substitution of management agent, management personnel, or otherwise, in a manner satisfactory to HUD); and

(4) A situation that HUD Headquarters has determined requires submission of a MIO plan.

(Approved by the Office of Management and Budget under control number 2502-0395)

[54 FR 9713, Mar. 7, 1989, as amended at 54 FR 49279, Nov. 30, 1989]

§ 219.315 Amount of assistance.

(a) The amount of assistance will not exceed the sum of the following, minus the owner contribution made in accordance with § 219.305:

(1) The amount the Secretary determines is necessary to cover capital improvements at the project with respect to capital items that have failed, or are likely to fail or deteriorate seriously within 24 months;

(2) The amount the Secretary determines is necessary to upgrade the capital items and related capital items to meet cost-effective energy efficiency standards approved by HUD; and

(3) The amount the Secretary determines is necessary to comply with the Department's standards in 24 CFR Part 8 for accessibility to individuals with handicaps.

(b) Notwithstanding paragraph (a) of this section, if the requested loan is greater than the remaining balance of the mortgage, the loan will not exceed 80 percent of the appraised value of the property as repaired, less the balance of the first mortgage.

§ 219.320 Loan terms and conditions.

(a) The length of the loan term will be determined based on various factors, including the useful life of the improvement, the amount financed, and the impact on tenant rents. The term generally will be for the remaining period of the original mortgage, and the term may not exceed that period. With respect to a non-insured project, the loan term will generally be for the remaining period during which the owner is under an obligation to provide housing for lower income families, and the term may not exceed that period.

(b) In determining the interest rate on the loan, the Secretary will consider factors such as the length of the loan term and the effect of the required debt service on tenant rents.

(1) The minimum rate is the applicable Federal rate determined by the Secretary of the Treasury at the end of the Federal fiscal year before the loan is to be made, minus 3 percentage points, plus an allowance established by the Secretary of HUD to cover administrative costs and probable losses under the program.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the rate to be charged may not be less than 3 percent nor more than 6 percent.

(3) The rate that represents both the minimum and the maximum rate is 6 percent, unless the applicable Federal rate determined by the Secretary of the Treasury for a fiscal year is less than 8.5 percent or HUD changes the allowance from its initial amount of .5 percent, thereby producing a minimum rate other than 6 percent. In that event, HUD will publish in the FEDERAL REGISTER the following: the rate determined by the Secretary of the Treasury, the allowance established by HUD, and the minimum rate.

(4) Notwithstanding the minimum rate limitations specified in paragraphs (b)(1) and (b)(2) of this section, the Secretary may charge a lesser rate if the Secretary determines that the lower rate is necesary to maintain reasonable rental rates. (See § 219.325.)

(c) Each loan for capital improvements is a liability of the project and cannot be discharged in any bankruptcy proceeding under section 727, 1141, or 1328(b) of title 11, United States Code. The project owner will be required to execute a note evidencing the capital improvement loan, which generally must be secured.

(d)(1) A capital improvement loan may be made under this subpart to a project owner who already has received assistance under this part, so long as the capital items that are the subject of the loan application have reached the end of their useful life and the project meets all of the applicable eligibility criteria for the capital improvement loan (see §§ 219.110 and 219.305).

(2) A capital improvement may not be financed partly by operating assistance under Subpart A and partly by a

capital improvement loan under Subpart B. However, a project owner may apply for assistance to cover deferred liabilities under Subpart B and, simultaneously, apply for a loan to cover capital improvements under Subpart C.

§ 219.325 Effect on rental rates.

(a) Rent increases resulting from the debt service and other expenses of a loan for capital improvements under this part for an owner whose project rents are not approved by HUD and that is subject to a plan of action approved under Part 248 are governed by the rent agreements entered into as part of that plan of action.

(b) If rent increases that would result from the debt service and other expenses of a capital improvement loan under this subpart for a project other than one described in § 219.330(a) would cause the rents of lower income residents of the project to be higher than the amount that would be allowed for eligible families under 24 CFR 813.107, the Secretary may consider taking any or all of the following actions;

(1) Increase the amount of the owner's contribution under § 219.305 to an amount not to exceed 30 percent of the total estimated cost of the capital improvements involved.

(2) Increase the term of the loan determined under § 219.305(a) to a term that does not exceed the remaining term of the mortgage on the project.

(3) Reduce the rate of interest determined under § 219.320(b) on the capital improvement loan to a rate not lower than one percent.

(4) Provide assistance under the Section 8 Existing Housing program (including project-base Certificates or Loan Management Set-aside), to the extent amounts are available for such assistance, and without regard to the limitation contained in 24 CFR 813.105 on the number of non-very low income families that may be admitted to the program.

§ 219.330 Priorities for funding.

(a) The Secretary will establish an annual set-aside for projects that are eligible for incentives to continue to operate as low- to moderate-income housing under a plan of action in accordance with Part 248, to assure that top priority for funding capital improvement loans is given to this category of projects. This set-aside may be increased or decreased during the year if it is determined to be appropriate.

(b) To the extent that funds are available for projects other than those described in paragraph (a) of the section, priority will be given to projects based on the extent to which—

(1) The capital improvements for which the loan is requested are immediately required;

(2) The project serves as the residence of lower income families, and the extent to which other suitable housing is unavailable for such families in the areas in which the project is located;

(3) The capital improvements for which the loan is requested involve the life, safety, or health of the residents of the project, or involve major capital improvements in the project; and

(4) The project demonstrates the greatest financial distress, while continuing to meet the requirements of § 219.110.

§ 219.335 Operations.

(a) Interest on the capital improvement loan starts to accure and the loan amortization period begins when the loan proceeds have been spent.

(b) If, after the work is completed, the estimated cost proves to be less than originally estimated, the excess will be returned to the Flexible Subsidy Fund, described in § 219.115, unless HUD has approved the excess for additional items or improvements. Any anticipated cost overruns must be reported to HUD immediately. The principal balance of the capital improvement loan may be increased at the sole discretion of HUD and subject to the availability of funds. Until the project owner receives a written commitment for an increase in the principal balance of the loan, the project owner will be solely responsible for any excess costs of performing the capital improvements. In the case of an identity of interest firm, no increases in the principal balance of the capital im-

provement loan to cover cost overruns will be considered.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

Subpart A—Eligibility Requirements—Homes

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220.2 [Reserved]
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220.25 Maximum mortgage amounts—dollar limitation.
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220.100 Incorporation by reference.
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PROJECT MORTGAGE INSURANCE

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Subpart E—Servicing Responsibilities—Homes

220.900 Cross-reference.

AUTHORITY: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

SOURCE: 36 FR 24573, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Homes

HOME MORTGAGE INSURANCE

§ 220.1 Cross-reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages under section 203 of the National Housing Act apply to mortgages covering one- to eleven-family dwellings under section 220 of the National Housing Act, except the following provisions:

Sec.
203.15 Certification of appraisal amount.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.42 Rental properties.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.49 Eligibility of adjustable rate mortgages.
203.50 Eligibility of rehabilitation loans.
203.51 Negotiated interest rate.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 220 of the Act.

[36 FR 24573, Dec. 22, 1971, as amended at 44 FR 46836, Aug. 9, 1979; 45 FR 76389, Nov. 18, 1980; 47 FR 16779, Apr. 20, 1982; 49 FR 23585, June 6, 1984; 50 FR 4647, Feb. 1, 1985; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48203, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 220.2 [Reserved]

§ 220.5 Location of property.

The mortgaged property must be located in

(a) The area of an existing slum clearance and urban redevelopment project covered by a Federal-aid contract executed or prior approval grant-

ed (pursuant to Title I of the Housing Act of 1949, as amended) before the effective date of the Housing Act of 1954, or

(b) An urban renewal area (as defined in Title I of the Housing Act of 1949, as amended), or

(c) The area of an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended, providing for redevelopment or rehabilitation of urban areas made necessary as the result of a disaster, or

(d) An area in which a program of concentrated code enforcement activities is being carried out pursuant to section 117 of the Housing Act of 1949; or

(e) An area in which concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation or preservation. The locally developed strategy shall:

(1) Provide for a combination of physical improvements, necessary public facilities and services, housing programs, private investment and citizen self-help activities appropriate to the needs of the area;

(2) Coordinate public and private development efforts; and

(3) Provide sufficient resources to produce substantial long-term improvements in the area within a reasonable period of time, taking into account the severity of the area's problems.

[36 FR 24573, Dec. 22, 1971, as amended at 48 FR 35394, Aug. 4, 1983; 49 FR 11161, Mar. 26, 1984]

§ 220.10 Certificate by Secretary to Commissioner or Designation by Secretary.

(a) *Urban renewal area.* No mortgage may be insured in an area described in § 220.5 (a), (b) or (c) until a redevelopment or urban renewal plan has been approved for the area by the governing body of the locality involved and by the Secretary for Housing and Urban Development, and the Secretary has certified to the Commissioner that:

(1) The redevelopment plan or the urban renewal plan conforms to a general plan for the locality as a whole, and

(2) There exists the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan, or

(3) There exists an urban renewal plan as required for projects assisted under section 111 of the Housing Act of 1949, as amended, which plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and there exists the necessary authority and financial capacity to insure completion of such urban renewal plan.

(b) *Area with concentrated activities.* No mortgage may be insured in an area described in § 220.5(e) until the Secretary has designated the area as meeting the requirements of that section.

[48 FR 35395, Aug. 4, 1983, and 49 FR 11161, Mar. 26, 1984]

§ 220.15 Standards and conditions of acceptability.

The mortgaged property shall meet such standards and conditions as the Commissioner shall prescribe to establish the acceptability of such property for mortgage insurance. These shall include standards and conditions designed to restore the quality of the area to a condition which would justify mortgage insurance.

§ 220.20 Dwelling units on property.

At the time the mortgage is insured, there shall be located on the mortgaged property a dwelling designed principally for residential use by not more than 11 families. Such dwellings may be connected with other dwellings by a party wall or otherwise. Any such dwelling located in an area described in § 220.5 (a), (b) or (c) shall be constructed or rehabilitated in accordance with an urban renewal plan approved by the Secretary.

[48 FR 35395, Aug. 4, 1983, and 49 FR 11161, Mar. 26, 1984]

§ 220.25 Maximum mortgage amounts—dollar limitation.

The mortgage shall involve a principal obligation not in excess of the dollar limitation set forth in § 203.18(a)(1) or § 203.18(b) plus not to exceed $9,165 for each additional unit in excess of four.

[45 FR 76389, Nov. 18, 1980]

§ 220.30 Maximum mortgage amounts—loan-to-value limitation.

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is an occupant of the property shall not exceed the following:

(1) *New construction—prior approval.* If the mortgage covers a dwelling which is approved for mortgage insurance prior to the beginning of construction, the sum of the following percentages of the Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance:

(i) 97 percent of the first $25,000 of such value (100 percent of $25,000 of such value or the sum of such value not in excess of $25,000 and the items of prepaid expense approved by the Commissioner minus $200, whichever appraisal amount or sum is the lesser, in the case of a mortgagor qualifying as a veteran).

(ii) 95 percent of such estimate in excess of $25,000.

(iii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of the amount of such estimate in excess of $35,000.

(2) *New construction—no prior approval.* If the mortgage covers a new dwelling under construction which is approved for mortgage insurance after the beginning of construction, 90 percent of the Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance:

(i) 90 percent of the first $35,000 of such estimate.

(ii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of the amount of such estimate in excess of $35,000.

(3) *Existing construction—prior approval.* If the mortgage covers an existing dwelling approved for mortgage insurance prior to the beginning of construction or the construction of which has been completed for more than 1 year, the sum of the Commissioner's estimate of the cost of repair or rehabilitation added to the Commissioner's estimate of the value of the property before rehabilitation in the following percentages:

(i) 97 percent of the first $25,000 of the sum of such estimates (100 percent of $25,000 of the sum of such estimates or an amount derived by adding to the sum of such estimates not in excess of $25,000 the items of prepaid expense approved by the Commissioner and deducting $200, whichever appraisal amount or total amount is the lesser, in the case of a mortgagor qualifying as a veteran).

(ii) 95 percent of such estimates in excess of $25,000.

(iii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of the sum of such estimates in excess of $35,000.

(4) *Existing construction—no prior approval.* If the mortgage covers an existing dwelling which was not approved for mortgage insurance prior to the beginning of construction and the construction of which has been completed less than 1 year, 90 percent of the sum of the Commissioner's estimate of the cost of repair or rehabilitation added to the Commissioner's estimate of the value of the property before rehabilitation.

(5) *Refinancing.* In a case under paragraph (a) (3) or (4) of this section involving the refinancing of an existing indebtedness, the sum of the following:

(i) The estimated cost of repair and rehabilitation.

(ii) The amount (as determined by the Commissioner) required to refinance the existing indebtedness secured by the property.

(iii) Any existing indebtedness (as determined by the Commissioner) incurred in connection with improving, repairing, or rehabilitating the property.

(b) *Veteran qualifications.* The special veteran terms provided in paragraph (a) of this section shall only be applicable to a mortgage covering a single family dwelling executed by a

mortgagor who submits to the Commissioner one of the following certifications:

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days; or

(2) A Certificate or Eligibility from the Department of Veterans Affairs establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD-214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Department of Veterans Affairs establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months or continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(*2*) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Department of Veterans Affairs has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) Was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD-214 shall be submitted with the certification).

(c) *Nonoccupant mortgagors.* (1) A mortgage, executed by a mortgagor who is not the occupant of the property and who certifies to the Commissioner that he intends to hold the property for rental purposes, shall not exceed 93 percent of any amount available to a nonveteran under paragraphs (a) (1) through (4) of this section, or 100 percent of an amount computed under paragraph (a)(5) of this section.

(2) A mortgage, executed by a mortgagor who is not the occupant of the property and who certifies to the Commissioner that he intends to hold the property for the purpose of the sale, shall not exceed:

(i) 85 percent of any amount available to a nonveteran under paragraphs (a) (1) through (4) of this section, or 100 percent of any amount computed under paragraph (a)(5) of this section.

(ii) 100 percent of any amount available to a nonveteran under paragraphs (a) (1) through (4) of this section, without taking into consideration the refinancing limitations in paragraph (a)(5) of this section, if the mortgage covers a one- or two-family residence and the Commissioner is furnished with certificates indicating that:

(*a*) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property prior to the 18th amortization payment of the mortgage, except with the prior written approval of the Commissioner.

(*b*) There has been deposited in an escrow, trust, or special account not less than 15 percent of the original principal amount of the mortgage proceeds or such additional amount as may be necessary to reduce the remaining principal to an amount not exceeding the sum of the estimated cost of repairs and rehabilitations, and the amount required to refinance any existing indebtedness determined by the Commissioner to have been incurred in connection with improving, repairing or rehabilitating the property.

(c) The mortgagor agrees that, if the property is not sold prior to the due date of the 18th amortization payment of the mortgage to a purchaser acceptable to the Commissioner who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(d) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of the cash settlement to which the mortgagee would be otherwise entitled if a claim for insurance benefits is filed.

[36 FR 24573, Dec. 22, 1971, as amended at 39 FR 32433, Sept. 6, 1974; 42 FR 57435, Nov. 2, 1977; 52 FR 5534, Feb. 25, 1987; 54 FR 39595, Sept. 27, 1989]

§ 220.35 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition, or such larger amount as the Commissioner may determine, in cash or its equivalent.

§ 220.40 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor, shall not be eligible for insurance of said property is a part of, or adjacent or contiguous to a project, subdivision or group of similar rental properties which involve twelve or more dwelling units if the mortgagor has any financial interest in said properties.

(b) No two-, three-, or four-family dwelling nor single-family dwelling, if it is a part of a group of five of more single family dwellings held by the same mortgagor or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16 of this chapter, so long as such dwelling is subject to any insured mortgage.

(c) The provisions of paragraph (a) of this section shall not apply where the Commissioner determines that the application of such provisions would substantially interfere with the repair and rehabilitation of a subdivision or group of existing properties.

§ 220.45 Certificates of appraisal and replacement amounts.

All of the provisions of § 203.15 of this chapter apply to mortgages insured under this subpart except that with respect to mortgages meeting the requirements of § 220.21(a)(1), the application for insurance must be accompanied by an agreement satisfactory to the Commissioner executed by the seller, builder or such other person as required by the Commissioner whereby such person agrees that prior to any sale of the dwelling such person will deliver to the purchaser of the property a written statement acceptable to the Commissioner setting forth the amount of the Commissioner's estimate of the replacement cost of the property.

§ 220.50 [Reserved]

Insured Home Improvement Loans

Source: Sections. 220.100 through 200.108 appear at 45 FR 33967, May 21, 1980, unless otherwise noted.

§ 220.100 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act shall apply to insured home improvement loans on one-to-eleven-family dwellings under section 220(h) of the Act except the following:

Sec.
203.14 Builder's warranty.
203.15 Certification of appraisal amount.
203.17 Mortgage provisions.
203.18 Maximum mortgage amounts.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.23 Mortgagor's payments to include other charges.
203.24 Application of payments.
203.26 Mortgagor's payments when mortgage is executed.
203.28 Economic soundness of project.

Sec.
203.32 Mortgage lien.
203.37 Nature of title to realty.
203.38 Location of dwelling.
203.40 Location of property.
203.42 Rental properties.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.
203.45 Eligibility of graduated payment mortgages.
203.46 Eligibility of modified graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.

(b) References to "mortgage" in Part 203 shall be construed to refer to "loan" in §§ 220.100 et seq.

(c) For purposes of §§ 220.100 et seq., "outstanding indebtedness relating to the property" means the total outstanding amount of unsecured obligations of the borrower incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

[45 FR 33967, May 21, 1980, as amended at 45 FR 76389, Nov. 18, 1980; 53 FR 8883, Mar. 18, 1988]

§ 220.101 Mortgage provisions.

(a) The lender shall present for insurance a note and security instrument in a form meeting the requirements of the Commissioner. The Commissioner may prescribe a complete note and security instrument. For each case in which the Commissioner does not prescribe a complete note and security instrument, the Commissioner shall require specific language in the note and security instrument which shall be uniform for every note and security instrument, and may also describe the language or substance of additional provisions for all notes and security instruments as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each note and security instrument shall also contain any additional provisions necessary to create a valid and enforceable secure debt under the laws of the jurisdiction in which the property is located.

(b) The loan shall:

(1) Come due on the first of the month.

(2) Involve a principal obligation in multiples of $50.

(3) Have an amortization of either 5, 7, 10, 12, 15, 17, or 20 years by providing for either 60, 84, 120, 144, 180, 204, or 240 monthly amortization payments.

(4) Provide for payments to interest and principal to begin not later than the first day of the month following 60 days from the date the lender's certificate on the commitment was executed.

(c) The loan shall have a maturity satisfactory to the Commissioner not less than five nor more than 20 years from the date of the beginning of amortization.

(d) Prior to endorsement, the entire principal amount of the loan shall have been disbursed to the borrower or to his or her creditors for his or her account and with his or her consent.

[36 FR 24573, Dec. 22, 1971, as amended at 49 FR 21320, May 21, 1984; 53 FR 34283, Sept. 6, 1988]

§ 220.102 Maximum amount.

(a) The principal amount of the loan shall not exceed:

(1) The Commissioner's estimate of the cost of improvements, $40,000 or $12,000 per family unit, whichever is the lesser; or

(2) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 220.25 and 220.30 for mortgages on properties other than new construction; or

(3) Where the proceeds are to be used for the purpose indicated in § 220.105(a)(2), an amount which when added to the aggregate principal balance of any outstanding insured home improvement loans which were obtained for the purposes indicated in § 220.105(a)(2), creates an aggregate indebtedness for such purposes of not to exceed $12,000.

(b) In any geographical area where the Commissioner finds the cost levels so require, he may increase by not to

exceed 45 percent the $12,000 per family unit limitation set forth in paragraphs (a) (1) and (3) of this section.

§ 220.103 Type and location of property.

The property to be improved shall:

(a) Constitute real property located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands.

(b) Contain an existing structure or structures.

(c) Be located in one of the urban renewal areas specified in § 220.5.

[36 FR 24573, Dec. 22, 1971, as amended at 49 FR 12697, Mar. 30, 1984]

§ 220.104 Cost certification requirements.

A loan for the improvement of a structure which is used, or upon completion of the improvements will be used, as a dwelling for five-to-eleven families shall be subject to the provisions of paragraphs (a) through (c) of this section as follows:

(a) The lender shall submit with the application for commitment an agreement on a form prescribed by the Commissioner, executed by the borrower and the lender, in which:

(1) The borrower agrees to execute upon completion of the improvements a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the commitment, the amount of the loan shall not exceed the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $12,000 or adjusted to the lowest $100 multiple where the amount exceeds $12,000.

(b) No loan shall be insured unless in accordance with the agreement between the borrower and the lender.

(1) The required certification of actual cost is made by the borrower; and

(2) The amount of the loan is adjusted to reflect the actual cost of the improvements.

(c) The term "actual cost of the improvements" shall mean the cost to the borrower of the improvements after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including:

(1) The amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner; and

(2) A reasonable allowance for contractor's profit, in an amount approved by the Commissioner, where the Commissioner determines that there is an identity of interest between the borrower and the contractor.

(d) Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(e) Upon the Commissioner's approval of the borrower's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(f) The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records, including any collateral agreements.

§ 220.105 Use of proceeds.

(a) The proceeds of the loan shall be used only for the following purposes:

(1) To finance improvements that result in or are in connection with the conservation, repair, restoration or refurbishing of the basic livability or utility of an existing structure, including the property on which the structure is located, or in the conversion, alteration, enlargement, remodeling, or expansion of such structure, including a change in the living accommodations or the number of family dwelling units located therein.

(2) To pay that part of the cost of the construction or installation of sidewalks, curbs, gutters, street paving, street lights, sewers, or other public improvements, adjacent to or in the vicinity of the borrower's property, which is assessed against the borrower or for which he is otherwise legally liable as the property owner.

(b) No loan proceeds shall be used to finance individual equipment items except those relating to heating, ventilating or plumbing or those items determined by the Commissioner to be necessary and incident to improvements as outlined in paragraph (a) of this section.

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used upon completion of the improvements, primarily for residential purposes by not more than eleven families; and

(2) Have been constructed not less than ten years prior to the date of the application for commitment unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct defects which are not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

§ 220.106 Nature of borrower's ownership.

To be eligible for insurance, the property to be improved shall be owned by the borrower, or be leased by the borrower under a lease for not less than 99 years which is renewable, or be under a lease with an expiration date in excess of 10 years later than the maturity date of the loan.

§ 220.107 Certification as to outstanding indebtedness relating to the property.

The loan application shall be accompanied by a certificate by the borrower on a form prescribed by the Commissioner setting forth the total amount of outstanding indebtedness relating to the property.

§ 220.108 Acceptable risk.

The loan transaction shall, in the opinion of the Commissioner, constitute an acceptable risk.

WAIVERS

§ 220.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations—Homes

§ 220.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering 1- to 11-family dwellings insured under section 220 of the National Housing Act, except the following:

Sec.

203.259 Scope.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.340 Conditions of special forbearance relief.
203.342 Recasting of mortgage.
203.343 Partial release, addition or substitution of security.
203.350 Assignment of defaulted mortgage—ingeneral.
203.350a Assignment of defaulted mortgage.
203.351 Application for insurance benefits and fiscal data.
203.353 Certification by mortgagee.
203.400 Method of payment.
203.402a Reimbursement for uncollected interest.

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 220 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24573, Dec. 22, 1971, as amended at 42 FR 29304, June 8, 1977; 48 FR 28807, June 23, 1983; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48203, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 220.252 Forbearance of foreclosure and assignment of mortgage.

All of the provisions of §§ 203.340 through 203.342, 203.350, 203.352 and 203.353 of this chapter shall apply to mortgages insured under this subpart, except that the provisions relating to forbearance of foreclosure, recasting of the mortgage and assignment of a defaulted mortgage, shall be applicable only to a mortgage covering a property having not more than four dwelling units.

§ 220.275 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any differences between the total amount of the claim and the amount of the debentures issued.

Insured Home Improvement Loans

§ 220.350 Cross-reference.

(a) All of the provisions of §§ 203.440 through 203.495 of this chapter covering insured home improvement loans under section 203(k) of the Act shall apply to home improvement loans on one-to-four family dwellings under section 220(h) of the Act, except as set out in paragraph (b).

(b) The provisions of §§ 203.473(a) shall not be applicable to home improvement loans on one-to-four family dwellings under section 220(h) of the Act.

[52 FR 1330, Jan. 13, 1987]

Subpart C—Eligibility Requirements—Projects

Project Mortgage Insurance

§ 220.501 Cross-reference.

(a) All of the provisions of Subpart A, Part 207 of this chapter, concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except the following provisions:

Sec.
207.2 Issuance of commitment.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.17 Classification.
207.19 Required supervision of private mortgagors.
207.24 Development of property.
207.27 Certificates of actual cost.
207.31 Eligibility of miscellaneous-type mortgages.
207.32a Eligibility of mortgages on existing projects.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer

to section 220 of the National Housing Act.

[36 FR 24573, Dec. 22, 1971, as amended at 40 FR 10177, Mar. 5, 1975]

§ 220.502 Location of property.

The mortgaged property must be located in:

(a) The area of an existing slum clearance and urban redevelopment project covered by a Federal-aid contract executed or a prior approval granted (pursuant to Title I of the Housing Act of 1949, as amended), before the effective date of the Housing Act of 1954, or

(b) An urban renewal area (as defined in title I of the Housing Act of 1949, as amended) or

(c) The area of an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended, providing for redevelopment or rehabilitation of urban areas made necessary as the result of a disaster, or

(d) An area in which a program of concentrated code enforcement activities is being carried out pursuant to section 117 of the Housing Act of 1949; or

(e) An area in which concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation or preservation. The locally developed strategy shall:

(1) Provide for a combination of physical improvements, necessary public facilities and services, housing programs, private investment and citizen self-help activities appropriate to the needs of the area;

(2) Coordinate public and private development efforts;

(3) Provide sufficient resources to produce substantial long-term improvements in the area within a reasonable period of time, taking into account the severity of the area's problems.

[36 FR 24573, Dec. 22, 1971, as amended at 45 FR 38356, June 6, 1980; 48 FR 35395, Aug. 4, 1983; 49 FR 11161, Mar. 26, 1984]

§ 220.503 Certificate by Secretary to Commissioner or Designation by Secretary.

(a) *Urban renewal area.* No mortgage may be insured in an area described in § 220.502 (a), (b) or (c) until a redevelopment or urban renewal plan has been approved for the area by the governing body of the locality involved and by the Secretary of Housing and Urban Development, and the Secretary has certified to the Commissioner that:

(1) The redevelopment plan or the urban renewal plan conforms to a general plan for the locality as a whole, and

(2) There exists the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan, or

(3) There exists an urban renewal plan as required for projects assisted under section 111 of the Housing Act of 1949, as amended, which plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and there exists the necessary authority and financial capacity to insure completion of such urban renewal plan.

(b) *Area with concentrated activities.* No mortgage may be insured in an area described in § 220.502(e) until the Secretary has designated the area as meeting the requirements of that section.

[48 FR 35395, Aug. 4, 1983, and 49 FR 11161, Mar. 26, 1984]

§ 220.504 Standards and conditions of acceptability.

The mortgaged property must meet such standards and conditions as the Commissioner shall prescribe to establish the acceptability of such property for mortgage insurance. These will include standards and conditions designed to restore the quality of the area to a condition which would justify mortgage insurance.

§ 220.505 Eligible mortgagors.

In order to be eligible under this subpart, the mortgagor shall be one of the following types:

(a) *Private mortgagors.* Any mortgagor approved by the Commissioner which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation.

(b) *Public mortgagors.* A Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend or redevelopment or housing corporation or other legal entity restricted by or under Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation.

§ 220.506 Development of property.

(a) *Obligation of mortgagor to construct project.* At the time the mortgage is insured, the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property or to rehabilitate existing housing accommodations thereon. The Commissioner may insure a mortgage on a completed project constructed pursuant to a commitment to insure upon completion.

(b) *Minimum number of units.* The project shall consist of not less than two rental dwelling units on one site and may be detached, semidetached, or row houses, or a multifamily structure. The site may consist of two or more noncontiguous parcels of land whenever the Commissioner shall have determined that the parcels are (1) so situated as to comprise a readily marketable real estate entity, and (2) within an area small enough to allow convenient and efficient management.

(c) *Compliance with governmental regulations.* The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

(d) *Property Facilities.* The project shall be predominantly residential. It may include such nondwelling facilities as the Commissioner determines will contribute to the economic feasibility of the project and will be desirable and consistent with the urban renewal plan or, where appropriate, with the locally developed strategy for neighborhood improvement, conservation, or preservation. In approving such facilities, the Commissioner shall give due consideration to the possible effect of the project on other business enterprises in the community.

[36 FR 24573, Dec. 22, 1971, as amended at 48 FR 35395, Aug. 4, 1983; 49 FR 11161, Mar. 26, 1984]

§ 220.507 Maximum mortgage amounts.

(a) *Dollar limitation—in general.* A mortgage may involve a principal obligation not in excess of the following:

(1) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner), an amount per family unit, depending on the number of bedrooms, which may be:

(i) $25,350 without a bedroom.

(ii) $28,080 with one bedroom.

(iii) $33,540 with two bedrooms.

(iv) $41,340 with three bedrooms.

(v) $46,800 with four or more bedrooms.

(2) Where the project involves the rehabilitation of not more than five family units, the mortgage amounts per family unit designated in paragraph (a)(1) of this section may be increased by 25 percent, as follows:

(i) $41,925 for a unit with two bedrooms.

(ii) $51,675 for a unit with three bedrooms.

(iii) $58,500 for a unit with four or more bedrooms.

(b) *Increased dollar limitation—elevator type structures.* In order to compensate for higher costs incident to the construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amounts per family unit in paragraph (a)(1) of this section, as follows:

(1) With respect to any elevator type structure, to not to exceed:

(i) $29,250 without a bedroom.

(ii) $32,760 with one bedroom.

(iii) $40,170 with two bedrooms.
(iv) $50,310 with three bedrooms.
(v) $56,885 with four or more bedrooms.

(2) With respect to any elevator type project involving the rehabilitation of not more than five family units, the dollar amounts per family unit, as provided in paragraph (b)(1) of this section, may be increased by 25 percent, as follows:
(i) $50,213 for a unit with two bedrooms.
(ii) $62,888 for a unit with three bedrooms.
(iii) $71,106 for a unit with four or more bedrooms.

(c) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase any of the dollar amount limitations in paragraphs (a) and (b) of this section—
(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and
(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.
In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of paragraphs (a) through (c) of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness that is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of:
(i) The Commissioner's estimate of the cost of the repair or rehabilitation; and
(ii) The Commissioner's estimate of the value of the property before repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (i) The Commissioner's estimate of the cost of the repair or rehabilitation and (ii) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

The dollar limitation set forth in this section is in addition to the loan-to-value limitation as set forth in § 220.508.

(e) *Loans to cover 2-year operating loss*—(1) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense

of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

[36 FR 24573, Dec. 22, 1971, as amended at 41 FR 41880, Sept. 23, 1976; 48 FR 16669, Apr. 19, 1983; 49 FR 12697, Mar. 30, 1984; 49 FR 19458, May 8, 1984; 53 FR 8883, Mar. 18, 1988]

§ 220.508 Maximum mortgage amount—loan-to-value limitation.

In addition to meeting the dollar limitation set forth in § 220.507, the mortgage shall be in an amount not to exceed:

(a) *Approved new construction.* 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed, if the project is approved for mortgage insurance prior to the beginning of construction. The replacement cost of the property or project may include the land, the proposed physical improvements, utilities within the boundaries of the property or project, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner; and shall include an allowance for builder's and sponsor's profit and risk to be determined by totaling the foregoing items, with the exception of the land, and apply the percentage or percentages specified in § 220.513.

(b) *Nonapproved new construction.* 90 percent of the Commissioner's estimate of the value of the property or project when the proposed improvements are completed, if the project is under construction and was not approved for mortgage insurance prior to the beginning of construction.

(c) *Repair and rehabilitation.* 90 percent of the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property or project before repair and rehabilitation.

(d) [Reserved]

(e) *Limitations on purchase from local public agency.* If the mortgage involves the financing of the purchase of property which has been rehabilitated by a local public agency with federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949, the mortgage shall not exceed the lesser of the following amounts:

(1) 90 percent of the Commissioner's estimate of the appraised value of the property, as of the date the mortgage is accepted for insurance.

(2) 90 percent of the actual cost of acquisition, as approved by the Commissioner.

[36 FR 24573, Dec. 22, 1971, as amended at 49 FR 12697, Mar. 30, 1984]

§ 220.509 Reduced mortgage amount—leaseholds.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

[41 FR 11286, Mar. 18, 1976]

§ 220.511 Supervision of mortgagors.

(a) All of the provisions of § 207.19 of this chapter apply, except that: (1) § 207.19(e) shall not apply, except as specifically referenced in this section; and (2) in the case of a mortgage covering property on which there is located a dwelling or dwellings designed principally for residential use for two to 11 families, § 207.19(d), relating to labor standards and prevailing wage requirements, shall not apply.

(b) Except as otherwise provided in paragraphs (c), (d), and (e) of this section, the mortgagor shall determine the charges for accommodations (rents), facilities, and services offered by the project.

(c) (1) For units occupied by tenants assisted under the programs referred to in paragraphs (c)(2) and (c)(3) of this section, the mortgagor may charge for facilities and services only as the Housing Assistance Payments (HAP) contract, applicable regulations, and HUD's administrative instructions permit. The mortgagor may not impose lesser charges for facilities or services on unassisted tenants than those imposed on assisted tenants.

(2) Rent adjustments for units occupied by tenants assisted under a Section 8 HAP contract Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), or Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies) of this title shall be determined in accordance with the HAP contract, applicable regulations, and HUD's administrative instructions, and shall not, without the prior approval of the Commissioner, exceed rents charged for comparable, unassisted units in the project.

(3) Rent adjustments for projects with units assisted under Part 886 of this title (Section 8 Housing Assistance Payments Program—Special Allocations) shall be determined under § 207.19(e)(2)(ii)(A) of this chapter, or the mortgagor may, with the prior approval of the Commissioner, determine the rents, except that the rents for units occupied by assisted tenants shall be determined in accordance with the HAP Contract, applicable regulations, and HUD's administrative instructions.

(4) The Commissioner will approve rents for units in a project not occupied by tenants receiving Section 8 assistance if the mortgagor and the Commissioner determine that such approval is necessary for the project to comply with the requirements of the Internal Revenue Code or State law. If such a determination is made, the Commissioner will approve rents in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the option of the mortgagor.

(5) The Commissioner will approve rental adjustments, in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the election of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(i) The firm commitment to insure the mortgage under this part was issued before June 1, 1983;

(ii) At the time that the mortgagor (or its predecessor in title) (A) obtained a firm commitment to insure the mortgage under this part, or (B) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(iii) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

(d) (1) The Commissioner will regulate, as provided in paragraph (d)(2) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(i) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine:

(A) The maximum charges for accommodations (rents), facilities, and services offered by the project under paragraph (b) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(B) The maximum project rents on the basis of the alternative formula contained in paragraph (c)(3) of this section for mortgages insured before July 21, 1986, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program, Special Allocations).

(ii) (A) As of December 1, 1987, the project was receiving assistance under

a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations); or

(B) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based upon tenant income data supplied to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to decontrol project rentals under paragraph (b) of the section or to use the alternative formula for determining project rentals under paragraph (c)(3) of this section.

(2) For projects that meet the criteria in paragraph (d)(1) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approve in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approved these charges and later rent adjustments on the same basis and in the same manner as they were approved immediately before June 1983, except that mortgagors may use the forward-based budgeting provision in 24 CFR 207.19(e)(ii)(A) for purposes of determining project rentals.

(3) Any mortgagor that is subject to this paragraph (d), that determined—

(i) The charges for accommodations (rents), facilities, and services offered by the project without the Commissioner's regulation (as provided by paragraph (b) of this section), or

(ii) Project rentals on the basis of the alternative formula contained in paragraph (c)(3) of this section,

must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (d)(2) of this section.

(e) Any State or local law, ordinance, or regulation regulating the rents of projects subject to paragraph (b) or (c) of this section may be preempted only as provided in Part 246 of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

[51 FR 20271, June 4, 1986, as amended at 53 FR 15817, May 4, 1988]

§ 220.512 Certificates of actual cost.

(a) *Mortgagor's certificate*—(1) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted prior to final endorsement and upon completion of the improvements to the satisfaction of the Commissioner.

(2) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(i) The cost plus construction contract, including the builder's fee actually paid and approved by the Commissioner; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(ii) The architect's fee.

(iii) The offsite public utilities and streets not included in paragraph (a)(2)(i) of this section.

(iv) The organization and legal expenses.

(v) The other items of expense approved by the Commissioner.

(3) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers,

directors, stockholders or partners. Any such payments shall be deducted from the costs determined under paragraph (a)(2) of this section.

(b) *Records.* The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(c) *Certificate of public accountant.* The certificate of actual cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 220.513 Builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include an allowance for builder's and sponsor's profit and risk, the amount of which shall be dependent upon a determination by the Commissioner as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided in § 220.512(a)(2)(i). This allowance shall be 10 percent of the actual cost computed in accordance with § 220.512(a) excluding the following items:

(1) Any builder's fee actually paid and approved by the Commissioner. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(c) *Nonidentity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost computed in accordance with § 220.512(a) excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

§ 220.525 Mortgages of $200,000 or less involving rehabilitation.

In the case of rehabilitation of an existing project and when the principal amount of the loan is $200,000 or less, all of the provisions of §§ 220.501 through 220.513 relating to project mortgage insurance shall apply except as modified below:

(a) *Classification of mortgagors.* In order to be eligible as a mortgagor the applicant shall qualify as one of the following:

(1) *Private mortgagors.* Any mortgagor approved by the Commissioner.

(2) *Public mortgagors.* A Federal or state instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend or redevelopment or housing corporation formed under federal or state laws or regulations.

(b) *General supervision of mortgagors.* The provisions of § 207.18(a) and (c) of this chapter shall not apply.

(c) *Required supervision of private mortgagors.* (1) The provisions of § 207.19, paragraph (a) *Capital structure;* paragraph (b) *Rate of return;* paragraph (c) *Requirements incident to insurance of advances,* subparagraph (1); paragraph (e) *Rents and charges;* paragraph (f) *Methods of operation,* subparagraphs (3) and (5); and paragraph (h) *Advance amortization* of this chapter shall not apply.

(2) In a project involving the insurance of advances, the mortgagor shall deposit with the mortgagee or, in a de-

pository satisfactory to the mortgagee and under control of the mortgagee an amount, satisfactory to the Commissioner, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to the accruals for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage.

(3) The mortgagor shall execute and deliver to the Commissioner a certificate or agreement that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner. Commencing on the date the certificate or agreement is executed, and so long as the mortgage is insured or held by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner; and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The mortgagor shall file with the Commissioner and the mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(i) Upon demand, annual financial reports; and

(ii) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage.

Insured Project Improvement Loans

§ 220.550 Definitions.

As used in §§ 220.550 et seq., the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Insured loan" means a loan which has been insured by the FHA, as evidenced by the endorsement of the credit instrument for insurance by the Commissioner.

(e) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(f) "Loan" means an advance of funds or credit evidenced by a note, which is secured by a security instrument.

(g) "Outstanding indebtedness relating to the property" means the total outstanding amount of unsecured obligations of the borrower incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

(h) "Lender" means an approved financial institution eligible for insurance under section 220(h) of the Act that is the holder of an insured loan or the holder of a loan presented for insurance.

§ 220.552 Form of application.

An application for the issuance of either a conditional or firm commitment for insurance of a loan on a project shall be submitted by an eligible lender and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless accompanied by the exhibits called for by the form.

§ 220.553 Application fee.

(a) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(b) *Application for firm commitment.* An application for a firm com-

mitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the loan applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the loan applied for, shall also be submitted with the application for a firm commitment.

§ 220.554 Commitment and commitment fee.

(a) *Conditions of commitment*—(1) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the project and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(2) *Firm commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the loan will be insured.

(b) *Types of firm commitment.* The firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(c) *Term of commitment.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(2) A firm commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(3) A firm commitment to insure upon completion shall be effective for a designated term within which the borrower is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(4) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 220.555 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(a) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(b) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

§ 220.560 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in loan between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the loan, either by amendment or by substitution of a loan, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

§ 220.561 Refund of fees.

If the amount of the commitment issued or increase in loan granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that the improvements or financing of the project have been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine.

§ 220.562 Charges by lender.

The lender may collect from the borrower the amount of the fees provided for in §§ 220.550 et seq. The lender may also collect from the borrower an initial service charge in an amount not to exceed 2 percent of the original principal amount of the loan to reimburse the lender for the cost of closing the transaction. Any additional charges shall be subject to prior approval of the Commissioner.

§ 220.563 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1–203.4 or § 203.6 of this chapter shall be eligible for insurance of project improvement loans under § 220.550 et seq.

§ 220.564 Note and security form.

The lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property to be improved is located.

§ 220.565 Disbursement of proceeds.

Prior to final endorsement, the entire principal amount of the note shall have been disbursed to the borrower or to his creditors for his account and with his consent.

§ 220.570 Loan multiples.

The loan shall involve a principal obligation in multiples of $50.

§ 220.571 Method of loan payment.

The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender and the Commissioner.

§ 220.572 Date of first payment to principal.

The Commissioner shall estimate the time necessary to complete the improvements to the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the improvements and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 220.573 Maturity of loan.

The loan shall have a maturity satisfactory to the Commissioner not less than 5 or more than 20 years from the date of the beginning of amortization or three-quarters of the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

§ 220.574 Loan amortization period.

The loan shall have an amortization period of either 5, 10, 15 or 20 years by providing for either 60, 120, 180 or 240 monthly amortization payments.

§ 220.575 Maximum loan amounts.

(a) The loan shall not exceed:

(1) The Commissioner's estimate of the cost of the improvements of $12,000 per family unit, whichever is the lesser; or

(2) An amount which, when added to any outstanding indebtedness related to the property creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 220.506, 220.507, and 220.508 for mortgages on properties of the same type other than new construction; or

(3) Where the proceeds are to be used for the purposes indicated in § 220.601(a)(2), an amount which when added to the aggregate principal balance of any outstanding insured project improvement loans which were obtained for the purposes indicated in § 220.601(a)(2) creates the aggregate indebtedness for such purposes of not to exceed $12,000.

(b) In any geographical area where the Commissioner finds cost levels so require, he may increase by not to exceed 45 percent the per family unit limitations set forth in paragraphs (a) (1) and (3) of this section.

§ 220.576 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the loan outstanding on the due date of each installment.

(c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[36 FR 24573, Dec. 22, 1971, as amended at 49 FR 19458, May 8, 1984]

§ 220.577 Eligibility of title.

When the principal amount of the loan exceeds $40,000, in order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 220.580 Title evidence.

When the principal amount of the loan exceeds $40,000, the lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a) of this section or if the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender without expense to the Commissioner, shall furnish such evidence of title as provided in paragraph (b) of this section as the Commissioner may require. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will become an owner's policy running to the lender or the Secretary, as the case may be.

(b) The abstract of title shall be satisfactory to the Commissioner, prepared by an abstract title company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

§ 220.581 Security instrument to cover entire property.

The security instrument shall cover the entire property included in the housing project.

§ 220.582 Covenant against liens.

The security instrument shall contain a covenant against the creation by the borrower of liens against the property superior to the lien of such instrument.

§ 220.583 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

§ 220.584 Accumulation of other items.

When the principal amount of the loan exceeds $200,000, the Commissioner may require that the security instrument provide for such equal monthly payments by the borrower to the lender as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the date on which the items became delinquent. The security instrument shall further provide that such payments shall be held by the lender for the purpose of paying such ground rents, taxes, water rates, assessments, and insurance premiums before the same become delinquent. The security instrument shall also make provision for an adjustment in case the estimated amount of such taxes, water rates, assessments and insurance premiums shall prove more or less than the actual amount thereof so paid by the borrower.

§ 220.585 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and this aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan;

(3) Amortization of the principal of the loan.

(b) When the principal amount of the loan exceeds $200,000 and the security instrument provides for the accumulation of the items enumerated in § 220.584 the lender shall apply the payments received from the borrower in the following order:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessments and fire and hazard insurance premiums;

(3) Interest on the loan;

(4) Amortization of the principal of the loan.

(c) Any deficiency in the amount of any monthly payments required under paragraph (a) or (b) of this section, shall constitute an event of default and the loan shall further provide for a grace period of 30 days within which time the default must be cured.

§ 220.590 Prepayment privilege and prepayment charge.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (c) of this section, the security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days' advance written notice.

(2) If the loan exceeds $200,000 it may contain a provision for a charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge.

(b) *Prepayment under cost certification.* Any reduction in the original principal amount of the loan resulting from the certification of the cost re-

quirements of §§ 220.620 through 220.625, and 220.630 shall not be construed as a prepayment of the mortgage permitting the imposition of any penalty or charge.

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24573, Dec. 22, 1971, as amended at 51 FR 2359, Jan. 16, 1986]

§ 220.592 Late charge.

The loan may provide for the collection by the lender of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 220.593 Certificate regarding use for transient or hotel purposes.

The borrower shall certify under oath, that so long as the loan is insured by the Commissioner, the borrower will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such loan for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean:

(a) Rental for any period less than 30 days; or

(b) Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens and bellboy service.

§ 220.594 Zoning, deed or building restrictions.

The project when rehabilitated shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations.

§ 220.595 Certificate of nondiscrimination by borrower.

The borrower shall certify to the Commissioner as to each of the following points:

(a) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the security instrument to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 220.600 Covenant relating to use of property.

When the principal amount of the loan exceeds $40,000, the security instrument shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended, at the date the loan was executed.

§ 220.601 Use of proceeds.

(a) The proceeds of the loan shall be used only for the following purposes:

(1) To finance improvements that result in or are in connection with the conservation, repair, restoration or refurbishing of the basic livability or utility of an existing structure, including the property on which the structure is located, or in the conversion, alteration, enlargement, remodeling, or expansion of such structure, including a change in the living accommodations or the number of family dwelling units located therein.

(2) To pay that part of the cost of the construction or installation of sidewalks, curbs, gutters, street paving, street lights, sewers, or other

public improvements, adjacent to or in the vicinity of the borrower's property, which is assessed against the borrower or for which he is otherwise legally liable as the property owner.

(b) No loan proceeds shall be used to finance individual equipment items except those relating to heating, ventilating or plumbing or those items determined by the Commissioner to be necessary and incident to improvements as outlined in paragraph (a) of this section.

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used, upon completion of the improvements, primarily for residential purposes by five or more families; and

(2) Be located in one of the urban renewal areas specified in § 220.502; and

(3) Have been constructed not less than ten years prior to the date of the application for commitment unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct defects which were not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

§ 220.602 Nature of borrower's ownership.

To be eligible for insurance, the property to be improved shall be held by the borrower in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease with an expiration date in excess of 10 years later than the maturity date of the loan.

§ 220.603 Supervision by Commissioner.

The Commissioner may regulate and restrict the borrower as long as the Commissioner is the insurer, holder or reinsurer of the loan. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 220.610 Commitments to insure.

(a) *Conditions of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the loan will be insured.

(b) *Insurance of advances.* When the principal amount of the loan exceeds $40,000, the commitment may provide for the insurance of advances of loan money made during the construction of the improvements.

(c) *Insurance upon completion.* The commitment may provide for the insurance of the loan after completion of the improvements.

(d) *Renewal of commitment.* The commitment may be renewed or extended in such manner as the Commissioner may specify.

§ 220.611 Building loan agreement.

When the principal amount of the loan exceeds $40,000, and there is to be insurance of advances during construction of the improvements, the borrower and lender shall, prior to the initial endorsement of the loan for insurance, execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions, under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 220.612 Assurance of completion.

(a) When the principal amount of the loan exceeds $40,000, assurance of completion satisfactory to the Commissioner shall be furnished in an amount of at least 10 percent of the cost of the construction of the improvements to the project as estimated by the Commissioner and shall be in one of the following forms:

(1) A bond of a surety company satisfactory to the Commissioner on the standard form prescribed by the Commissioner with the borrower and lender as joint obligees.

(2) An escrow deposit with the lender or with a depository satisfactory to the lender and the Commissioner of cash or securities of, or fully guaranteed as to principal and interest by, the United States of America, under a completion assurance agreement prescribed by the Commissioner.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 220.614 Prevailing wage requirements.

When the property to be improved consists of a dwelling or dwellings for twelve (12) or more families, the following requirements shall be met:

(a) *Labor standards.* Any contract or subcontract executed for the performance of constructing the improvements to the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(b) *Ineligible contractors.* No contract shall be entered into with a general contractor or any subcontractor for the construction of improvements, if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

(c) *Ineligible advances.* Unless approved by the Commissioner, no advance under the loan shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

(d) *Wage certificate.* No advance under the loan shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that the laborers and mechanics employed in constructing the improvements to the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

[36 FR 24573, Dec. 22, 1971, as amended at 49 FR 45127, Nov. 15, 1984]

§ 220.615 Discrimination prohibited.

Any contract or subcontract executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, creed or national origin.

§ 220.616 Cost certification requirements; loans $200,000 or less.

When the principal amount of the loan is $200,000 or less the following provisions shall apply:

(a) *Certification agreement.* The lender shall submit with the application for commitment an agreement on a form prescribed by the Commissioner, executed by the borrower and the lender, in which:

(1) The borrower agrees to execute, upon completion of the improvements, a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the commitment, the amount of the loan shall not exceed the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $10,000, or adjusted to the lowest $100 multiple where the amount exceeds $10,000.

(b) *Certificate and adjustment.* No loan shall be insured unless in accordance with the agreement between the borrower and the lender.

(1) The required certification of actual cost is made by the borrower; and

(2) The amount of the loan is adjusted to reflect the actual cost of the improvements.

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(c) *Cost computation.* The term "actual cost of the improvements" shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including:

(1) The amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner; and

(2) A reasonable allowance for contractor's profit, in an amount approved by the Commissioner, where the Commissioner determines that there is an identity of interest between the borrower and the contractor.

§ 220.618 Cost certification requirements; loans over $200,000.

When the principal amount of the loan is over $200,000 the following provisions shall apply:

(a) *Certification of cost requirements.* Prior to initial endorsement of the loan for insurance, the borrower, the lender and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of loan proceeds over the actual cost of the improvements to the project. Under this agreement the borrower shall agree to:

(1) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers;

(2) Enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the borrower and the builder;

(3) Execute a certificate of actual costs upon completion of the improvements; and

(4) Apply any excess of loan proceeds over the actual cost to the borrower of the improvements in reduction of the outstanding balance of the principal of the loan.

(b) *Form of contract.* The form of contract between the borrower and the builder shall be in accordance with the following:

(1) *Lump sum contract.* If the Commissioner determines that neither the borrower nor any of the officers, directors or stockholders of the borrower have any interest in the builder or contractor, there may be used a lump sum contract providing for payment of a specified amount.

(2) *Fixed fee contract.* If the Commissioner determines that the borrower, its officers, directors or stockholders have any interest, financial or otherwise in the builder or contractor, the form of contract shall provide for payment of the actual cost of construction not to exceed an upset price and may provide for payment of a builder's fixed fee not exceeding a reasonable allowance as established by the Commissioner in accordance with customary practices in the area.

(c) *Certificates as to subcontracts.* If the Commissioner determines that the borrower, its officers, directors or stockholders have any interest, financial or otherwise, in any subcontract or material supplier, the borrower shall certify in form prescribed by the Commissioner, prior to final endorsement of the loan for insurance, that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type of labor and materials.

(d) *Certificate of actual cost.* The borrower's certificate of actual cost, in form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement and shall show the actual cost to the borrower of:

(1) The construction contract, including all costs of construction under a lump sum contract, after deduction of any kickbacks, rebates, trade discounts or other similar payments to the borrower corporation, or to any of its officers, directors or stockholders;

(2) Architect's fees;

(3) Off-site public utilities and streets not included in the general contract;

(4) Organizational and legal work; and

(5) Other items of expense approved by the Commissioner.

(e) *Fixed fee contract—additional certification.* When the work has been completed under a fixed fee contract, the borrower's certification shall also show:

(1) Allocations of general overhead items as are acceptable to the Commissioner; and

(2) A reasonable allowance for the builder's profit as established by the Commissioner.

(f) *Contractor's certification—fixed fee contract.* A contractor receiving a fixed fee shall certify in form prescribed by the Commissioner as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and less any kickbacks, rebates, trade discounts, or other similar payments to the builder or borrower corporation or any of its officers, directors or stockholders.

(g) *Adjustment resulting from cost certification.* If the principal obligation of the loan exceeds the actual cost to the borrower of the improvement, the loan shall be reduced by the amount of such excess prior to the final endorsement for insurance.

(h) *Certificate of public accountant.* The certificates of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 220.630 Records.

The borrower shall keep and maintain adequate records of all costs of any construction improvements or other costs items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records, including any collateral agreements.

§ 220.632 Effects of agreement.

Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

§ 220.633 Cost certification incontestable.

Upon the Commissioner's approval of the borrower's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

Subpart D—Contract Rights and Obligations—Projects

Project Mortgage Insurance

§ 220.751 Cross-reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except the following provisions:

Sec.
207.259 Insurance benefits.
207.256b Modification of mortgage terms.

(b) For the purposes of the portion of this subpart, covering multifamily project mortgages, all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 220 of the National Housing Act.

§ 220.753 Forbearance relief.

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of regular mortgage payments for a specified period of time, if the following requirements are met:

(1) The mortgage was endorsed for insurance on or after July 7, 1961.

(2) The Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time and evidences such determination by written approval of the forbearance agreement.

(b) The time specified in § 207.258(a) of this chapter, within which a mort-

gagee shall give the Commissioner written notice of its intention to file an insurance claim, shall be suspended for the period of time specified in the forbearance agreement as long as the mortgagor complies with the requirements of such agreement.

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its decision to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 220.765 shall be applicable.

§ 220.760 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except that all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any differences between the total amount of the claim and the amount of the debentures issued.

§ 220.765 Special insurance benefits—forbearance relief cases.

(a) Upon a failure of the mortgagor to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, the mortgagee shall be entitled to obtain a special insurance payment in cash, in lieu of the insurance benefits otherwise provided under this subpart. To receive the special insurance payment, the mortgagee shall assign the mortgage to the Commissioner in compliance with the requirements of § 207.258(b) of this chapter.

(b) The special insurance benefits to the mortgagee shall be a cash payment computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, there shall be included in the cash payment an amount equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the payment is made; except that when the mortgagee fails to meet any of the applicable requirements of § 207.258(b) of this chapter and § 220.753(c) within the specified times and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such debenture interest allowance shall be computed only to the date on which the particular required action should have been taken.

Insured Project Improvement Loans

§ 220.800 Definitions.

All of the definitions contained in § 220.550 shall apply to §§ 220.800 et seq. In addition the following terms shall have the meaning indicated:

(a) "Contract of insurance" means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan, incorporating by reference the regulations in §§ 220.800 et seq. and the applicable provisions of the Act.

(b) "Maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan.

§ 220.801 Initial insurance endorsement.

The Commissioner shall indicate his insurance of the loan by endorsing the original credit instrument and identifying the section of the Act and the

regulations under which the loan is insured and the date of insurance.

§ 220.802 Final insurance endorsement.

When all advances of loan proceeds have been made, and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he shall indicate on the original credit instrument the total of advances he has approved for insurance and again endorse such instrument.

§ 220.803 Effect of insurance endorsement.

From the date of initial endorsement, the Commissioner and the lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

§ 220.804 Insurance premiums.

(a) *First premium.* The lender, upon the initial endorsement of the loan for insurance, shall pay to the Commissioner a first loan insurance premium equal to one-half of one percent of the original face amount of the note.

(b) *Second premium; first payment more than one year following initial endorsement.* If the date of the first principal payment is more than one year following the date of initial insurance endorsement, the lender, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the loan.

(c) *Third premium.* On the date of the first principal payment, the lender shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the note for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the three premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the note for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obligation of the note for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(d) *Second premium; first payment one year or less following initial endorsement.* If the date of the first principal payment is one year, or less than one year following the date of initial insurance endorsement, the lender upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the note for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of (1) one percent per annum of the average outstanding principal obligation of the note for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the note for the year following the date of the first principal payment.

(e) *Second premium; commitment to insure upon completion.* Where the note is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the lender on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the note for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the note for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(f) *Annual insurance premium.* Until the note is paid in full, or until the loan is assigned to the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the first principal payment shall pay an annual loan insurance premium equal to one-half of one percent of the average outstanding principal obligation of

the loan for the year following the date on which such premium becomes payable.

(g) *Method of premium payment.* Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in §§ 220.800 et seq.

(h) *Calculation of premiums.* The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 220.804a Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978]

§ 220.805 Termination of insurance.

(a) *Prepayment in full.* The contract of insurance shall be terminated if the loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment.

(b) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the borrower and the lender for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

§ 220.806 Pro rata refund of insurance premium.

Upon termination of loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid which is applicable to the portion of the year subsequent to the date of the prepayment or the effective date of the voluntary termination of the contract of insurance.

§ 220.810 Definition of default.

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument and such default continues for a period of 30 days, the note or security instrument shall be considered in default for the purposes of §§ 220.800 et seq.

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default, provided the lender because of such default, has exercised its right under the note or security instrument and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days, the lender shall be entitled to receive the benefits of insurance hereinafter provided.

§ 220.811 Date of default.

For the purposes of §§ 220.800 et seq., the date of default shall be considered as:

(a) The date of the first uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 220.812 Notice of default.

(a) If the default as defined in § 220.810 is not cured within the 30 day grace period, the lender shall,

within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact the lender may not have elected to accelerate the debt.

§ 220.813 Commissioner's right to require acceleration.

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or otherwise being apprised thereof, the Commissioner reserves the right to require the lender to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 220.814 Election of action.

Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgment, or any other security device has been used to secure the payment of a loan made under the provisions of this section, the lender may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 220.820 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 220.821 Items to be filed on submitting claim.

Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

(a) The fiscal data pertaining to the loan transaction;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counter claims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) All hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security instrument;

(e) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default, and all claims of the lender against the borrower or others arising out of the loan transaction;

(f) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner.

(g) Any property held by the lender or its agents or to which it is entitled

and, if payment is requested in debentures, any cash held by the lender or its agents or to which it is entitled, including deposits made for the account of the borrower, and which have not been applied in reduction of the principal of the mortgage indebtedness;

(h) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(i) Any additional information or data which the Commissioner may require.

§ 220.822 Claim computation; items included.

(a) *Assignment of loan.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in an amount equal to the unpaid principal balance of the loan plus:

(1) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(2) Any advances approved by the Commissioner made previously by the lender under the provisions of the note of security instrument or instruments.

(3) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(4) Reimbursement for premiums paid on any hazard insurance policies held on the property.

(5) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned as of the date insurance settlement occurs, except that when the lender fails to meet any one of the applicable requirements of §§ 220.812, 220.820, and 220.821 within the specified time (or within such further time as the Commissioner may approve in writing), the debenture interest shall be computed only to the date to which the particular action should have been taken or to which it was extended.

(b) *Method of payment.* Payment of claim shall be made in the following manner:

(1) *Payment in cash.* Unless a written request for payment in debentures is filed with the application, payment shall be made in cash.

(2) *Optional payment in debentures.* Payment shall be made in debentures upon filing a written request with the application.

§ 220.823 Claim computation; items deducted.

If the lender is to receive payment in cash, there shall be deducted from the total of the added items in § 220.822 the following:

(a) Any balance of the loan not advanced to the borrower;

(b) Any cash held by the lender or its agents or to which it is entitled; including deposits made for the account of the borrower and which have not been applied in reduction of the principal obligation under the note and security instrument or instruments.

§ 220.830 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued or as of the date the loan was endorsed for insurance, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the FEDERAL REGISTER.

[47 FR 26125, June 17, 1982]

§ 220.832 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 220.834 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 220.836 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000, and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the lender.

§ 220.838 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual in-

terest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

§ 220.840 Issue date of debentures.

The debentures shall be issued as of the date of the execution of the assignment of the loan to the Commissioner.

§ 220.842 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, shall be adjusted by the issuance of a check in payment thereof.

§ 220.850 Assignment of insured loans.

(a) An insured loan may not be transferred or pledged prior to the full disbursement of the loan, except with the prior written approval of the Commissioner which approval may be subject to such conditions and qualifications as the Commissioner may prescribe. Subsequent to full disbursement such loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm, or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan by means of a declaration of trust or by a participation or trust certificate or by any other device, unless with the prior written approval of the Commissioner, which approval may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe: *Provided,* That this paragraph shall not be applicable to any loan so long as it is held in a common trust fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further,* That this paragraph shall not be applicable to any loan so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any loan transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interest in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

Subpart E—Servicing Responsibilities—Homes

§ 220.900 Cross-reference.

All of the provisions of Subpart C, Part 203 of the chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mort-

gages covering 1- to 11-family dwellings insured under section 220 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48203, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Low Cost Homes

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Subpart E—Servicing Responsibilities—Low Cost Homes

221.800 Cross-reference.

AUTHORITY: Secs. 211 and 221, National Housing Act, 12 U.S.C. 1715b, 1715*l*; section 221.544(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

SOURCE: 36 FR 24587, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Low Cost Homes

INSURANCE UNDER 221(d)(2)

§ 221.1 Cross-reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages on dwellings insured under section 221 of the National Housing Act except the following provisions:

Sec.
203.17 Mortgage provisions.
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203.49 Eligibility of adjustable rate mortgages.
203.50 Eligibility of rehabilitation loans.
203.51 Negotiated interest rate.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 221 of the Act.

[36 FR 24587, Dec. 22, 1971, as amended at 41 FR 42949, Sept. 29, 1976; 44 FR 46836, Aug. 9, 1979; 45 FR 76389, Nov. 18, 1980; 47 FR 16779, Apr. 20, 1982; 49 FR 23585, June 6, 1984; 50 FR 4647, Feb. 1, 1985; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 221.3 Definition of displaced family.

As used in this subpart, the term "displaced family" shall mean a family displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

§ 221.5 Mortgage form.

(a) The term "mortgage" as used in this Subpart A has the same meaning as in § 203.17(a)(1) of this chapter.

(b) The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, shall require specific language in the mortgage which shall be uniform for every mortgage, and may also describe the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

(c) The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

[53 FR 34283, Sept. 6, 1988]

§ 221.10 Maximum mortgage amount—dollar limitation.

A mortgage executed by a mortgagor who is an occupant of the property shall not exceed:

(a) $31,000 for a one-family residence, except that such amount may be increased to $36,000 in the case of a family with five or more persons.

(b) $35,000 for a two-family residence.

(c) $48,600 for a three-family residence.

(d) $59,400 for a four-family residence.

[42 FR 57435, Nov. 2, 1977]

§ 221.11 Increased mortgage amount—high cost areas.

In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitations set forth in § 221.10 to amounts not to exceed:

(a) $36,000 for a one-family residence, except that such amount may

be increased to $42,000 in the case of a family with five or more persons.

(b) $45,000 for a two-family residence.

(c) $57,600 for a three-family residence.

(d) $68,400 for a four-family residence.

[39 FR 32433, Sept. 6, 1974, as amended at 42 FR 57435, Nov. 2, 1977]

§ 221.12 Eligibility limitations—two- to four-family residences.

A mortgage secured by property upon which there is located a dwelling designed principally for a two-, three-, or four-family residence shall not be eligible for insurance under this section unless one of the dwelling units is occupied by the mortgagor.

§ 221.20 Maximum mortgage amount—loan-to-value limitation.

In addition to meeting the dollar limitations as set forth in this subpart, the mortgage amount shall be limited as follows:

(a) *Occupant mortgagors.* (1) When the mortgagor is the occupant of the property, the mortgage shall not exceed:

(i) The Commissioner's estimate of the appraised value of the property as of the date the mortgage is accepted for insurance, where repair and rehabilitation is not involved; or

(ii) In the case of rehabilitation, the amount of the mortgage shall not exceed the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(2) The limitations in paragraph (a)(1) of this section are applicable only if the mortgage covers a dwelling which:

(i) Was approved for mortgage insurance prior to the beginning of construction, or

(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs prior to the beginning of construction, or

(iii) Was completed more than one year prior to the date of the application for mortgage insurance, or

(iv) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction.

(3) If the conditions of paragraph (a)(2) of this section are not met, the amount of the mortgage shall not exceed 90 percent of the amount computed under paragraph (a)(1) of this section.

(b) *Nonoccupant mortgagors.* If the property is to be built or acquired and rehabilitated for sale and the insured mortgage financing is required to facilitate the construction or the repair or rehabilitation of the dwelling and provide financing pending the subsequent sale thereof to a qualified owner-occupant, 85 percent of the amount computed under paragraph (a) of this section or 85 percent of the value of the property, whichever is the lesser, as of the date the mortgage is accepted for insurance, if the mortgagor is not the occupant.

[36 FR 24587, Dec. 22, 1971, as amended at 45 FR 46378, July 10, 1980; 47 FR 33495, Aug. 3, 1982; 54 FR 39525, Sept. 27, 1989]

§ 221.21 Maximum mortgage amount—limitations on refinancing.

In addition to the limitations set forth in §§ 221.10, 221.11, and 221.20, in any case involving refinancing, the mortgage shall not exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Commissioner, required to refinance the existing indebtedness secured by the property.

§ 221.25 Due date of mortgage.

The mortgage shall come due on the first day of the month.

§ 221.30 Maturity of mortgage.

The mortgage shall provide for complete amortization not to exceed 30 years from the date of the beginning of amortization of the mortgage, except that such maturity may be 35 or 40 years in the following instances:

(a) In the case of a displaced family, if it is determined by the Commissioner that the mortgagor is not able to make the required payments under a

mortgage having a shorter amortization period.

(b) In the case of any other mortgagor, if it is determined by the Commissioner that the mortgagor is an owner-occupant of the property and is not able to make the required payments under a mortgage having a shorter amortization period, and the dwelling was approved for mortgage insurance by the Commissioner before the beginning of construction, or approved for guaranty, insurance, or direct loan by the Secretary of Veterans Affairs before such construction.

[49 FR 21320, May 21, 1984, as amended at 54 FR 39525, Sept. 27, 1989]

§ 221.32 Beginning of payments on mortgage.

The mortgage shall provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

§ 221.35 Disbursement of mortgage amount.

The entire principal amount of the mortgage shall be disbursed to the mortgagor or his creditors for the mortgagor's account and with his consent.

§ 221.40 Amortization period of the mortgage.

The mortgage shall contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

[45 FR 29278, May 2, 1980, and 48 FR 12085, Mar. 23, 1983]

§ 221.45 Mortgage obligation in multiples.

The mortgage shall involve a principal obligation in multiples of $50.

§ 221.50 Mortgagor's minimum investment.

(a) At the time the mortgage on a single-family dwelling is insured, a mortgagor other than a mortgagor qualifying as a displaced family shall have paid in cash or its equivalent at least 3 percent of the Commissioner's estimate of the acquisition cost of the property.

(b) At the time the mortgage on a two-, three-, or four-family dwelling is insured, a mortgagor other than a mortgagor qualifying as a displaced family shall have paid in cash or its equivalent at least the minimum amount required pursuant to the loan-to-value limitations as set forth below.

(1) *Loan-to-value limitation—approval prior to construction.* If the mortgage covers a dwelling approved for mortgage insurance prior to the beginning of construction, or if the mortgage covers a dwelling which was completed more than 1 year preceding the date of the application for mortgage insurance, the sum of the following percentages of the Commissioner's appraised value of the property as of the date the mortgage is accepted for insurance constitutes the maximum loan-to-value ratio:

(i) 97 percent of the first $25,000 of such value.

(ii) 95 percent of such value in excess of $25,000.

(iii) 80 percent of such value in excess of $35,000.

(2) *Loan-to-value limitation—no prior approval.* A loan-to-value limitation of 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance is required if the dwelling does not meet the requirements contained in paragraph (b)(1) of this section.

(c) A mortgagor qualifying as a displaced family shall have paid in cash or its equivalent on account of the property, at the time the mortgage is insured, not less than:

(1) Two hundred dollars for a one-family dwelling;

(2) Four hundred dollars for a two-family dwelling;

(3) Six hundred dollars for a three-family dwelling;

(4) Eight hundred dollars for a four-family dwelling.

[37 FR 23161, Oct. 31, 1972, as amended at 39 FR 32433, Sept. 6, 1974; 42 FR 57435, Nov. 2, 1977]

§ 221.54 Inclusion of closing costs and expenses in cash payment.

The mortgagor's required minimum investment may include amounts covering settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

§ 221.55 Deferred sale of properties.

A mortgagor under a mortgage covering a one-family dwelling may, subject to such terms and conditions as the Commissioner may prescribe, be permitted to sell the property to a displaced person on a deferred payment basis, to provide for the accumulation of the required cash payment.

§ 221.57 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0118, and 2502-0059)

[54 FR 39694, Sept. 27, 1989]

INSURANCE UNDER 221(h)

§ 221.60 Eligibility requirements for low income homeowners.

(a) *Application of subpart to section 221(h).* Except as provided in this section, all of the provisions of this subpart shall apply to the insurance of a home mortgage under section 221(h) of the National Housing Act.

(b) *Definitions.* As used in this section, the following terms shall have the meaning indicated:

(1) "Single family dwelling" includes a two family dwelling in which one of the units is occupied by the owner.

(2) "Assessment," when used in a mortgage covering a one family unit in a condominium project (except where the term refers to assessments and charges by the association of owners) means special assessments by state or local governmental agencies, districts, or other public taxing or assessing bodies

(c) *Types of transactions.* The mortgage shall involve one of the following types of transactions:

(1) The financing of the purchase of a rehabilitated single family dwelling or a rehabilitated one family unit in a condominium project from a nonprofit mortgagor by a low income purchaser.

(2) The rehabilitation or improvement and refinancing of a single family dwelling owned and occupied by a mortgagor who has purchased the dwelling from a nonprofit organization that is engaged in purchasing, rehabilitating and selling substandard housing.

(d) [Reserved]

(e) *Income qualifications.* To qualify under this section, the mortgagor's income shall be approved by the Commissioner as meeting the requirements of section 221(h) of the Act.

(f) *Maximum mortgage amount.* The mortgage shall involve a principal obligation in an amount not exceeding that portion of the unpaid balance of the project mortgage which is allocable to the dwelling being purchased.

(g) *Mortgage maturity.* The mortgage shall be limited to a term not exceeding the term of the project mortgage remaining at the time of the purchase.

(h) *Mortgagor's minimum investment.* At the time the mortgage is insured, the mortgagor shall have paid on account of property at the time of purchase or at the time of rehabilitation or improvement and refinancing, as applicable, not less than $200 (in cash or its equivalent) all or any part of which may be applied in payment of closing costs.

(i) *Mortgage interest rate.* (1) The mortgage shall initially bear interest at the rate of 1 percent, 2 percent or 3 percent per annum depending upon the income of the mortgagor. The 3 percent interest rate shall apply if 20 percent of the mortgagor's annual family income is sufficient to make mortgage payments of principal, interest, taxes, and insurance at the 3 percent rate. If 20 percent of the mortgagor's annual family income is insufficient to make such mortgage payments at the 3 percent rate, but is suf-

ficient to make such payments at a 2 percent rate, then the interest rate shall initially be 2 percent per annum. If 20 percent of the mortgagor's annual family income is insufficient to make such mortgage payments at 2 percent, then the interest rate shall initially be 1 percent per annum.

(2) The mortgage shall provide that if the initial interest rate is set at 1 percent, the rate will be increased to 2 percent when the mortgagee determines that 20 percent of the family income of the mortgagor is sufficient to make mortgage payments of principal, interest, taxes, and insurance at the 2 percent rate, and to 3 percent when the mortgagee determines that 20 percent of the mortgagor's income is sufficient to make such mortgage payments at the 3 percent rate. The mortgage shall also provide for comparable increase to a 3 percent interest rate if the mortgage initially bears interest at 2 percent.

(3) The mortgage shall provide that if the rate of interest is increased, such rate shall not thereafter be decreased.

(4) In determining the mortgagor's family income, for the purpose of the 20 percent requirement specified in paragraph (i)(1) of this section, there shall be deducted an amount equal to $300 for each person under 21 who is a member of the immediate family and living with such family; and the earnings of the person under 21 shall not be included in family income.

(j) *Interest rate increase—discontinuance of occupancy.* The mortgage shall provide that if the mortgagor does not continue to occupy the property, the interest rate shall increase to the maximum rate in effect under this subpart at the time the commitment for insurance was issued on the project mortgage (where the mortgage finances the purchase of the property from a nonprofit mortgagor) or on the individual mortgage (where the mortgage finances the rehabilitation or improvement and refinancing of property owned by the mortgagor). If the property is sold to one of the following purchasers, the increase in interest rate shall not be required:

(1) A nonprofit organization which has been engaged in purchasing and rehabilitating deteriorating and substandard housing with financing provided pursuant to section 221(h) of the National Housing Act, except that the sale must be to the same nonprofit organization from which the unit was purchased if the mortgage finances such purchase.

(2) A public housing agency under the U.S. Housing Act of 1937 having jurisdiction over the area where the dwelling is located.

(3) A low income purchaser meeting the income requirements of section 221(h) of the Act.

(k) *Mortgage requirements—purchase from nonprofit.* Where the mortgage is financing the purchase of the property from a nonprofit mortgagor, the mortgage shall comply with each of the following requirements:

(1) It shall involve a principal obligation in an amount not exceeding that portion of the unpaid balance of the project mortgage which is allocable to the dwelling being purchased.

(2) It shall be limited to a term not exceeding the term of project mortgage remaining at the time of the purchase.

(l) *Property requirements—purchase of condominium unit.* Where the property being purchased from a nonprofit mortgagor involves a one-family unit in a condominium project, the following additional requirements shall be met:

(1) *Plan of apartment ownership.* The project in which the family unit is located shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Commissioner prior to its execution, and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(2) *Certificate by mortgagee.* The mortgagee shall certify as to each of the following:

(i) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(ii) That the mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(iii) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(3) *FHA controls for consumer and public interest.* The Commissioner may require the execution of a regulatory agreement which shall be made applicable to any association or cooperative of owners and to any subsequent owner of a family unit. The Commissioner may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(4) *Project mortgage certification.* The project mortgagee shall certify that, without regard to any provisions that may be contained in the mortgage relating to prepayment, no charge is contemplated or has been collected for the prepayment in full of the project mortgage.

(5) *Mortgage covenant concerning common expenses and assessments.* The mortgage presented for insurance shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

[36 FR 24587, Dec. 22, 1971, as amended at 45 FR 30603, May 8, 1980; 47 FR 29525, July 7, 1982; 53 FR 34283, Sept. 6, 1988]

INSURANCE UNDER 221(i)

§ 221.65 Eligibility requirements for low and moderate income purchaser of family unit in condominium.

(a) *Incorporation by reference.* Except as provided in this section, all of the provisions of this subpart shall apply to the insurance of a mortgage under section 221(i) of the National Housing Act covering the purchase of a family unit in a condominium by a low or moderate income mortgagor.

(b) *Purchaser qualifications.* To qualify as a mortgagor, the purchaser shall be approved by the Commissioner as having an income within the limits prescribed for occupants in projects financed with a below market interest rate mortgage insured pursuant to §§ 221.501 et seq.

(c) [Reserved]

(d) *Mortgage requirements.* The mortgage shall comply with the following requirements:

(1) It shall involve a principal obligation in an amount not exceeding 97 percent of the Commissioner's appraised value of the family unit, including the mortgagor's interest in the common areas and facilities, as of the date the mortgage is accepted for insurance.

(2) It shall bear interest at the below market rate in effect under § 221.518(b) at the time of the issuance of the commitment.

(3) It shall provide for complete amortization within 40 years from the beginning of amortization.

(4) It shall provide that if the mortgagor does not continue to occupy the property, the interest rate shall increase to the maximum rate in effect under this subpart at the time the commitment for insurance was issued on the project mortgage, except that the increase in interest rate shall not be applicable if the property is sold to one of the following purchasers:

(i) A nonprofit organization approved by the Commissioner.

(ii) A low or moderate income purchaser meeting the requirements of paragraph (b) of this section.

(5) It shall initially bear interest at the rate of 3 percent, 4 percent, 5 percent or 6 percent per annum, depending upon the income of the mortgagor. The interest rate shall be established at the highest of such percentages as the mortgagor will be able to pay using 20 percent of his annual family income. A provision shall be included in the mortgage to require that if the mortgagee determines that 20 percent of the mortgagor's annual family income is sufficient to make mortgage payments at a greater interest rate than initially established, the interest rate shall be increased in 1 percent increments up to 6 percent per annum with any additional increment increasing the interest up to the maximum rate permitted under this subpart at the time the commitment was issued for the insurance of the mortgage pursuant to this subpart. In determining

the mortgagor's family income, there shall be deducted an amount equal to $300 for each minor person who is a member of the immediate family and living with such family; and the earnings of the minor person shall not be included in family income.

(6) It shall provide that if the rate of interest is increased, such rate shall not thereafter be decreased.

(e) *Family unit price.* The price, including closing costs, for which the family unit is sold to the mortgagor shall not exceed the Commissioner's appraised value.

(f) *Downpayment by mortgagor.* At the time the mortgage is insured, the mortgagor shall have paid on account of the property not less than 3 percent of the acquisition cost, in cash or its equivalent, all or part of which may be applied in payment of closing costs.

(g) *Enabling instrument.* The family unit shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed or other recorded instrument which has been approved by the Commissioner prior to its execution, and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(h) *Certificate of mortgagee.* The mortgagee shall certify as to each of the following:

(1) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(2) That the mortgagor has good marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(3) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(i) *Regulatory agreement and conditions.* The Commissioner may require the execution of a regulatory agreement which shall be made applicable to any association or cooperative of owners and to any subsequent owner of a family unit. The Commissioner may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(j) *No prepayment charge.* The project mortgagee shall certify that, without regard to any provisions that may be contained in the mortgage relating to prepayment, no charge is contemplated or has been collected for the prepayment in full of the project mortgage.

(k) *Payment of common expenses.* The mortgage presented for insurance shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

(l) *Definition of assessment.* As used in the mortgage, the term "assessment," except where it refers to assessments and charges by the Association of Owners, shall be defined to mean "special assessments by state or local governmental agencies, districts or other public taxing or assessing bodies."

[36 FR 24587, Dec. 22, 1971, as amended at 45 FR 30603, May 8, 1980; 47 FR 29525, July 7, 1982; 49 FR 21320, May 21, 1984; 53 FR 34283, Sept. 6, 1988]

WAIVERS

§ 221.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations—Low Cost Homes

§ 221.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203

of the National Housing Act apply to mortgages covering one- to four-family dwellings insured under section 221 of the National Housing Act, except the following provisions:

Sec.
203.259a Scope.
203.260 Amount of Mortgage Insurance Premium (MIP).
203.261 Calculation of MIP.
203.262 Due date of MIP.
203.263 Adjustment of initial MIP.
203.264 Payment of MIP.
203.266 Period covered by MIP.
203.268 Pro rata payment of MIP.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.288 Discontinuance of adjusted premium charge.
203.295 Voluntary termination of insurance.
203.389 Waived title objections.
203.400 Method of payment.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.436 Claim procedure—graduated payment mortgages.
203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 221 of the Act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972; 41 FR 42949, Sept. 29, 1976; 42 FR 29304, June 8, 1977; 47 FR 30754, July 15, 1982; 48 FR 28807, June 23, 1983; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 221.254 Mortgage insurance premiums.

(a) All of the provisions of §§ 203.260 through 203.295 of this chapter relating to mortgage insurance premiums shall apply to mortgages insured under this subpart, except that as to mortgages meeting the special requirements of § 221.60 or § 221.65, such provisions shall only be applicable under the circumstances prescribed in paragraph (b) of this section. Notwithstanding any provision in the mortgage instrument, there shall be no adjusted mortgage insurance premium or voluntary termination charge due the Commissioner on account of the prepayment of any mortgage or the voluntary termination of any mortgage insurance contract where (1) The mortgage is prepaid in full, or (2) the Commissioner receives a request for voluntary termination on or after May 1, 1972.

(b) Whenever the interest rate on a mortgage insured under this part as having met the special requirement of § 221.60 or § 221.65 shall have been increased to the maximum rate in accordance with § 221.60(j), § 221.65(d)(4), or § 221.65(d)(5), the provisions of §§ 203.260 through 203.295 of this chapter relating to mortgage insurance premiums shall apply except that:

(1) References to the original principal amount shall be construed as the scheduled unpaid principal balance, without taking into account delinquent payments or prepayments, on the date of the change in interest rate required under the mortgage.

(2) References to the date of the issuance of a Mortgage Insurance Certificate or the date of the endorsement of the credit instrument or the date the insurance becomes effective shall be construed as the date of the change in interest required under the mortgage.

(3) References to the first year of amortization under the mortgage shall be construed as the period beginning on the date of the change in interest rate required under the mortgage and ending on the next anniversary of the beginning of amortization.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972]

§ 221.255 Assignment option.

(a) A mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery, either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with this section.

(b) The mortgagee may exercise its assignment option within 1 year following the twentieth anniversary of the date the mortgage was endorsed for insurance.

(c) Upon the exercise of the assignment option the Commissioner shall issue to the assignor mortgagee debentures having a total face value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

(d) The debentures issued pursuant to the exercise of an assignment option shall be dated as of the date the mortgage is assigned to the Commissioner and shall mature 10 years after such date.

(e) The debentures issued pursuant to the exercise of an assignment option shall bear interest at the "going Federal rate" at date of issuance. The "going Federal rate" means the annual rate of interest specified by the Secretary of the Treasury as applicable to the 6-month period which includes the issuance date of the debentures. The Secretary of the Treasury shall determine this applicable rate by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such 6-month period, on all outstanding marketable obligations of the United States having a maturity date of 8 to 12 years from the first day of May or November, as the case may be. If there should be no outstanding marketable obligations of the United States having the 8 to 12 year maturity at the time the Secretary of the Treasury is required to determine the debenture rate involved, the obligation next shorter than 8 years and the obligation next longer than 12 years respectively, shall be used.

(f) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect on the issue date, a date which shall be established as provided in § 203.410 of this chapter. The interest rate shall be established by the Commissioner in an amount not in excess of the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the 6-month period (consisting of January through June, or July through December) which includes the issuance date of such debentures, which applicable rate for each 6-month period shall be determined by the Secretary of the Treasury, at the request of the Commissioner, by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the calendar month next preceding the establishment of such rate of interest, on all outstanding marketable obligations of the United States having a maturity date of 15 years or more from the first day of such next preceding month, and by adjusting such estimated average annual yield to the nearest one-eighth of 1 per centum.

[36 FR 24587, Dec. 22, 1971, as amended at 49 FR 12697, Mar. 30, 1984]

§ 221.256 Interest rate increase and payment of mortgage insurance premiums on mortgages under § 221.60 and § 221.65.

(a) Where a mortgage meets the special requirements of § 221.60 or § 221.65, the following procedures are applicable:

(1) The mortgagee shall determine, at least biennially, whether the mortgagor has continued to occupy the property securing the mortgage. If the mortgagee determines that the mortgagor is not occupying the property or that the mortgagor has sold the property subject to the mortgage to a purchaser not qualifying under the provisions of § 221.60(h) or § 221.65(d)(4) (as appropriate) for the continuation of a below market interest rate, interest on such mortgage shall be computed by the mortgagee at the highest rate permissible under the mortgage. The computation at the higher rate shall be effective from the first day of the month following the month in which the right to collect interest at the increased rate first accrued, as determined by the mortgagee.

(2) The mortgagee shall determine the mortgagor's family income, at least biennially, and shall increase the mortgage interest pursuant to the requirements of §§ 221.60(g) and 221.65(d)(5), as appropriate, to comply with the requirements of such sections. The computation at the higher rate shall be effective from the first day of the month following the month in which the mortgagee determines that the mortgagor's family income was increased.

(b) The mortgagee shall notify the Commissioner, on a form prescribed by the Commissioner, within 30 days of making the determination of the right to compute interest at the higher rate, as provided in paragraph (a) of this section, of:

(1) The date on which such right first accrued, and

(2) The outstanding principal balance of the mortgage on the first day of the month following the date on which such right first accrued.

(c) The liability for payment of mortgage insurance premiums shall begin on and be computed from the first day of the month following the date on which the right to compute interest at the higher rate shall have first accrued.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972]

§ 221.275 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any differences between the total amount of the claim and the amount of the debentures issued.

§ 221.280 Waived title objections.

(a) *General provisions.* All of the provisions of § 203.389 of this chapter (relating to the waiver by the Commissioner of objections to title) shall apply to mortgages insured under this subpart, with the exception of mortgages involving condominium units.

(b) *Provisions applicable to condominium units.* Where the mortgage involves a condominium unit, the Commissioner shall not object to title by reason of the following matters:

(1) Violations of a restriction based on race, color, or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(2) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(3) Encroachments on the subject property by improvements on adjoining property, provided such encroachments do not interfere with the use of any improvements on the subject property.

(4) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property.

(5) Customary buildings or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

SPECIAL PROVISIONS APPLICABLE ONLY TO MORTGAGES INVOLVING CONDOMINIUM UNITS

§ 221.300 Changes in the plan of apartment ownership.

The mortgagee shall notify the Commissioner of any changes in the plan of apartment ownership and in the administration of the property. Such notification shall be given either at the time of the conveyance of the property or at the time of the assignment of the mortgage. Any changes in such plan shall require approval by the Commissioner.

§ 221.305 Condition of the multifamily structure.

(a) When a family unit is conveyed or a mortgage is assigned to the Commissioner, the family unit and the common areas and facilities (including restricted common areas and facilities) designated for the particular unit shall be undamaged by fire, earthquake, tornado, or boiler explosion, except if the property has been damaged, either of the following actions shall be taken:

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Commissioner.

(2) With the prior approval of the Commissioner, the property may be conveyed or the mortgage assigned to the Commissioner without repairing the damage. In such instances, the Commissioner shall deduct from the insurance benefits either his estimate of the decrease in value of the family unit or the amount of any insurance recovery received by the mortgagee, whichever is the greater.

(b) If the property has been damaged by fire and such property was not covered by fire insurance at the time of the damage, the mortgagee may convey the property or assign the mortgage to the Commissioner without deduction from the insurance benefits for any loss occasioned by such fire if the following conditions are met:

(1) The property shall have been covered by fire insurance at the time the mortgage was insured.

(2) The fire insurance shall have been later cancelled or renewal shall have been refused by the insuring company.

(3) The mortgagee shall have notified the Commissioner within 30 days (or within such further time as the Commissioner may approve) of the cancellation of the fire insurance or of the refusal of the insuring company to renew the fire insurance. This notification shall have been accompanied by a certification of the mortgagee that diligent efforts were made, but it was unable to obtain fire insurance coverage at reasonably competitive rates and that it will continue its efforts to obtain adequate fire insurance coverage at competitive rates

§ 221.310 Assessment of taxes.

When a family unit is conveyed to the Commissioner or a mortgage is assigned to the Commissioner, the unit shall be assessed and subject to assessment for taxes pertaining only to that unit.

§ 221.315 Certificate of tax assessment.

The mortgagee shall certify, as of the date of filing for record of the deed or assignment of the mortgage to the Commissioner, that the family unit is assessed and subject to assessment for taxes pertaining to that unit.

§ 221.320 Certificate or statement of condition.

(a) At the time of the assignment of the mortgage or conveyance of the property to the Commissioner, the mortgagee shall, as of the date of the filing for record of the deed or assignment,

(1) Certify that the conditions of § 221.305(a) have been met; or

(2) Submit a statement describing any such damage that may still exist.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or its statement as to damage shall be accepted by the Commissioner as establishing the condition of the family

unit and the common areas and facilities including restricted common areas and facilities designated for the particular unit.

§ 221.325 Cancellation of hazard insurance.

The provisions of § 203.382 of this chapter are incorporated by reference and shall apply to hazard insurance policies carried solely for the family unit.

Subpart C—Eligibility Requirements—Moderate Income Projects

§ 221.502 Application.

(a) An application for the issuance of a site appraisal and market analysis (SAMA) letter must be submitted by the project sponsor. An application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsor of such project. Such application shall be submitted to the local HUD field office on FHA approved forms.

(b) No application shall be considered unless the following applicable requirements are met:

(1) All of the exhibits required by the application form are submitted to the Commissioner.

(2) In a case involving a mortgage which is to bear interest at the below market rate provided in § 221.518(b), the Commissioner shall have issued a memorandum evidencing allocation of funds to the proposed project.

(c) An applicant may initially elect to submit an application for a SAMA letter, a conditional commitment or a firm commitment depending upon the completeness of the drawings, specifications and other required exhibits.

[39 FR 12003, Apr. 2, 1974, as amended at 40 FR 22829, May 27, 1975]

Fees

§ 221.503 Application fees.

(a) *Application fee—SAMA letter.* An application fee of $1.00 per thousand dollars of the requested mortgage amount shall accompany the application for a SAMA letter.

(b) *Application fee—conditional commitment.* An application-commitment fee of $1 per thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the application fee for an unexpired SAMA letter has been collected. A fee of $2 per one thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the SAMA application fee has been paid but the SAMA letter has expired or in cases in which a SAMA application fee has not been paid.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to prior fees received in connection with applications for a SAMA letter or a conditional commitment, will aggregate $3 per thousand dollars of the requested mortgage amount to be insured.

[39 FR 12003, Apr. 2, 1974]

§ 221.504 Rejection of an application.

A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or conditional commitment, shall be grounds for rejection of an application for conditional or firm commitment, respectively. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

[39 FR 12003, Apr. 2, 1974]

§ 221.505 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(a) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(b) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

§ 221.506 Fees on increases.

(a) *Fees on increases*—(1) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

(c) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

§ 221.506a Combined fee—rehabilitation sales mortgagor.

In the case of a rehabilitation sales mortgagor, the fees provided in §§ 221.503 through 221.506 shall not be applicable. In lieu of such fees, a combined application, commitment, and inspection fee of $40 per dwelling unit shall be paid to the Commissioner when the application for insurance is filed.

§ 221.506b Transfer fee.

Upon application for approval of a case involving the transfer of physical assets or involving the substitution of mortgagor, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage.

§ 221.507 Refund of fees.

If the amount of the commitment issued, or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection, and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

§ 221.508 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortga-

gee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 221.508a Fees not required.

The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[41 FR 14861, Apr. 8, 1976]

SAMA Letter and Commitment

§ 221.509 Effect and term of SAMA letter, conditional and firm commitment.

(a) *Effect of SAMA letter, conditional and firm commitment*—(1) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project, and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a commitment is received before expiration of the SAMA letter:

(i) The land value fully improved (with offsite improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units.

(iii) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

(iv) The applicable land use intensity number, from which may be determined the maximum floor area and minimum recreational, parking, living and open space area acceptable to the Commissioner for the proposed project.

(2) *Conditional commitment.* The issuance of a conditional commitment indicates completion of technical processing involving the estimated cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, the supportable cost, the financial and credit capacity of the sponsorship, financial requirements and the mortgage amount.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(b) *Term of SAMA letter, conditional commitment and firm commitment*—(1) *SAMA letter.* A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Conditional commitment.* A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(3) *Firm commitment*—(i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary

for the completion of construction and for obtaining sustaining occupancy.

(iii) The term of either a SAMA letter, or conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(c) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted.

[39 FR 12004, Apr. 2, 1974, as amended at 40 FR 22829, May 27, 1975]

ELIGIBLE MORTGAGORS

§ 221.510 Eligible mortgagors.

A mortgage shall be executed by a mortgagor meeting the following qualifications:

(a) *Nonprofit, builder-seller, and rehabilitation sales mortgagors.* (1) The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is in no manner controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of states or agencies thereof, or the Federal Housing Commissioner, as to rents, charges, and methods of operation. The regulation or supervision of the mortgagor shall be in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(2) The builder-seller mortgagor shall be a special type of mortgagor approved by the Commissioner which is organized:

(i) To construct or rehabilitate a multifamily project, and which has entered into a written agreement with a private nonprofit corporation, meeting the qualifications of paragraph (a)(1) of this section, to sell the project (upon final endorsement) to the nonprofit corporation at a purchase price not to exceed the certified actual cost of the project pursuant to § 221.550.

(ii) To operate the project until the conveyance to the nonprofit mortgagor, subject to special controls and requirements of the Commissioner as to rents, charges, rates of return and method of operation.

(iii) To operate the project, in the event of failure to convey to a nonprofit mortgagor at final endorsement, or within such additional period as may be agreed to in writing by the Commissioner, as a limited distribution mortgagor subject to the supervision, controls and requirements prescribed by the Commissioner for such mortgagor.

(3) The rehabilitation sales mortgagor shall be a special type of nonprofit mortgagor which shall:

(i) Meet the qualifications of paragraph (a)(1) of this section.

(ii) Undertake to purchase and rehabilitate deteriorating or substandard housing.

(iii) Under an agreement with the Commissioner, undertake to sell the rehabilitated housing to individuals or families having an income that meets the requirements of section 221(h) of the Act.

(b) *Public mortgagors.* A federal instrumentality, a state or political subdivision thereof, or an instrumentality of a state or of a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to section 8 of such Act) and which is acceptable to the Commissioner. Such a mortgagor shall be regulated or supervised as to rents, charges and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(c) *Limited distribution mortgagor.* The limited distribution mortgagor shall be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the Commissioner) as to distribution of income and

shall be regulated as to rents, charges, rate of return, and methods of operation in such form and manner as is satisfactory to the Commissioner to effectuate the purposes of this subpart.

(d) *Cooperative and investor sponsor mortgagors.* (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation approved by the Commissioner which restricts permanent occupancy of the project to the members of the corporation and which requires membership eligibility and transfers of membership in a manner approved by the Commissioner.

(2) The investor-sponsor mortgagor shall be a special type of mortgagor approved by the Commissioner which is organized to:

(i) Construct or rehabilitate a multifamily project, and transfer the project to a cooperative mortgagor within two years from the date of completion;

(ii) Operate the project until two years from the date of completion or until the conveyance to the cooperative mortgagor, whichever occurs sooner, subject to special controls and requirements of the Commissioner, including but not limited to, the disposition of net income;

(iii) Operate the project, in the event of failure to convey to a cooperative mortgagor within the two-year period as a limited distribution mortgagor subject to the controls and requirements of the Commissioner.

(3) Such a mortgagor will be regulated or restricted by the Commissioner as to rents or sales, charges, rate of return, and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart and protect the consumer interest.

(e) *General mortgagors.* Any mortgagor, approved by the Commissioner, not meeting the eligibility requirements of paragraphs (a) through (d) of this section which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation, in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(f) *Disclosure and verification of Social Security and Employer Identification Numbers.* To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0118, and 2502-0059)

[36 FR 24587, Dec. 22, 1971, as amended at 40 FR 20080, May 8, 1975; 54 FR 39694, Sept. 27, 1989]

Eligible Mortgages

§ 221.511 Mortgage form.

The mortgage shall be:

(a) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) In the case of cooperative and investor sponsor mortgagors, the mortgage shall provide that the mortgagor will not arrange for management of the property except in the manner and under an agreement approved by the mortgagee and the Commissioner in writing.

§ 221.512 Disbursement of the mortgage.

The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

§ 221.513 Mortgage lien.

A mortgagor shall certify at final endorsement of the loan for insurance that:

(a) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and

such other liens as may be approved by the Commissioner.

(b) There will not be outstanding any unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except obligations approved by the Commissioner.

§ 221.514 Maximum mortgage amounts.

(a) The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(1) *Dollar limitations on units.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) For projects involving eligible nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(A) $28,032 without a bedroom.

(B) $32,321 with one bedroom.

(C) $38,979 with two bedrooms.

(D) $49,893 with three bedrooms.

(E) $55,583 with four or more bedrooms.

(ii) For projects involving eligible mortgagors other than nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(A) $25,229 without a bedroom.

(B) $29,089 with one bedroom.

(C) $35,081 with two bedrooms.

(D) $44,904 with three bedrooms.

(E) $50,025 with four or more bedrooms.

(iii) For projects to be insured under section 221(d)(4) of the Act:

(A) $25,228 without a bedroom.

(B) $28,636 with one bedroom.

(C) $34,613 with two bedrooms.

(D) $43,446 with three bedrooms.

(E) $49,231 with four or more bedrooms.

(2) *New construction.* (i) In the case of new construction where the mortgage is to be insured under section 221(d)(3) of the Act and the mortgagor is a nonprofit, builder-seller, public, cooperative, or investor-sponsor, the Commissioner's estimate of replacement cost of the property or project when the improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner).

(ii) In the case of new construction where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builder's and sponsor's profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner after determining such allowance is unreasonable, prescribes a lessor percentage.

(iii) In the case of new construction where the mortgage is to be insured under section 221(d)(4) and the mortgagor is a nonprofit, builder-seller, public cooperative, or investor-sponsor, 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(3) *Repair or rehabilitation (including projects to be refinanced).* (i) In the case of a project which is to be repaired or rehabilitated where the mortgage is to be insured under section 221(d)(3) and the mortgagor is a nonprofit, builder-seller, rehabilitation sales, public, cooperative or investor-sponsor, the sum of the estimated cost of the repairs or rehabilitation of the project and the Commissioner's estimate of the value of the property before repairs or rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(iii) In the case of a project which is to be repaired or rehabilitated where the mortgage is to be insured under section 221(d)(4) and the mortgagor is a nonprofit, builder-seller, rehabilitation sales, public, cooperative, or investor-sponsor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(4) *Purchase from local public agency.* If the mortgage involves the financing of the purchase of property which has been rehabilitated by a local public agency with federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949, the mortgage shall not exceed the following amounts:

(i) Where the purchaser is a mortgagor other than a general or limited distribution mortgagor and the mortgage is to be insured under section 221(d)(3) of the Act, the appraised value of the property as of the date the mortgage is accepted for insurance, or the actual cost of acquisition, whichever amount is the lesser.

(ii) Where the purchaser is a general or limited distribution mortgagor, 90 percent of the appraised value of the property, as of the date the mortgage is accepted for insurance, or 90 percent of the actual cost of acquisition as approved by the Commissioner, whichever amount is the lesser.

(iii) Where the purchaser is other than a general or limited distribution mortgagor and the mortgage is to be insured under section 221(d)(4), 90 percent of the appraised value of the property, as of the date the mortgage is accepted for insurance, or 90 percent of the actual cost of acquisition as approved by the Commissioner, whichever amount is the lesser.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit, as provided in paragraph (a)(1) of this section, to not to exceed:

(1) For projects involving eligible nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(i) $29,500 without a bedroom.

(ii) $33,816 with one bedroom.

(iii) $41,120 with two bedrooms.

(iv) $53,195 with three bedrooms.

(v) $58,392 with four or more bedrooms.

(2) For projects involving eligible mortgagors other than nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(i) $26,550 without a bedroom.

(ii) $30,434 with one bedroom.

(iii) $37,008 with two bedrooms.

(iv) $47,876 with three bedrooms.

(v) $52,553 with four or more bedrooms.

(3) For projects to be insured under section 221(d)(4) of the Act:

(i) $27,251 without a bedroom.

(ii) $31,239 with one bedroom.

(iii) $37,986 with two bedrooms.

(iv) $49,140 with three bedrooms.

(v) $53,942 with four or more bedrooms.

(c) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase the dollar amount limitations in paragraphs (a) (1) and (b) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

(e) *Loans to cover 2-year operating loss*—(1) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such rate exceed the rate in effect under § 221.518(a) on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

[36 FR 24587, Dec. 22, 1971, as amended at 41 FR 11287, Mar. 18, 1976; 41 FR 41881, Sept. 23, 1976; 43 FR 39570, Sept. 6, 1978; 44 FR 28659, May 16, 1979; 48 FR 16669, Apr. 19, 1983; 49 FR 12697, Mar. 30, 1984; 53 FR 8884, Mar. 18, 1988]

§ 221.516 Maturity.

The mortgage shall have a maturity satisfactory to the Commissioner and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 221.517 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 221.518 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) In the case of a mortgage executed by other than a general mortgagor, as defined in § 221.510, the mortgage shall bear interest at a rate not exceeding that agreed to under paragraph (a) of this section up to and including the date of final endorsement by the Commissioner at which time the rate of interest may (with the approval of the Commissioner) be lowered to 3 percent per annum.

(c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorse-

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ment shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[49 FR 19458, May 8, 1984]

§ 221.519 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 221.519a Mortgage release provisions.

A mortgage executed by a rehabilitation sales mortgagor shall provide that at any time after final endorsement, the property covered by the mortgage may be released, in whole or in part, upon payment of the unpaid balance of the blanket mortgage allocable to the property released.

§ 221.519b Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8884, Mar. 18, 1988]

§ 221.520 Covenant against liens.

(a) The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be required in connection with the insurance of an operating loss loan or a supplementary loan.

(b) The covenant required under paragraph (a) of this section shall not apply where a lien inferior to the lien of the insured mortgage is given in favor of a Federal, State or local governmental agency or instrumentality under such circumstances as may be approved by the Commissioner, provided the source of funds for repayment of the inferior lien is limited to surplus cash or residual receipts.

[36 FR 24587, Dec. 22, 1971, as amended at 48 FR 35392, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

§ 221.521 Covenant for hazard insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in the amount estimated by the Commissioner at the time of completion of the entire project or units therefor. The policies evidencing such insurance shall have attached thereto, a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as their interests may appear.

§ 221.522 Accumulation of accruals.

(a) Except in the case of mortgages bearing interest at the rate set out in § 221.518(b), the mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) In the case of all mortgages insured under this subpart, the mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water

rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 221.523 Application of payments.

(a) The mortgage shall provide that all monthly payments being made by the mortgagor to the mortgagee shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance, where applicable.

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of the aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of thirty days, within which time the default must be cured.

§ 221.524 Prepayment privileges.

(a) *Prepayment in full—(1) Without prior Commissioner consent.* Except as otherwise provided in paragraphs (d) and (e) of this section, a mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated without the prior consent of the Commissioner in the following cases:

(i) Where the mortgage is insured under section 221(d)(4) of the Act.

(ii) Where the mortgagor is a limited distribution type, which is not receiving payments from the Commissioner under a rent supplement contract executed pursuant to Part 215 of this title, and where the prepayment occurs after the expiration of 20 years from the date of final endorsement of the mortgage.

(iii) Where the project is converted to condominium ownership or is purchased by a cooperative mortgagor, which actions are taken pursuant to section 221(i) or 221(j) of the Act.

(iv) Where the mortgage is insured pursuant to section 221(h) of the Act and the prepayment occurs as a result of a sale of the individual units comprising the project.

(2) *With prior Commissioner consent.* In all other cases, except those outlined in paragraph (a)(1) of this section, a mortgage indebtedness shall not be prepaid in full and the Commissioner's controls will not be terminated unless the Commissioner gives his prior consent to such prepayment.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to maturity, and with the approval of the Commissioner, partial prepayments may be made, after thirty days' written notice to the mortgagee, on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the mortgage, the mortgagee will be permitted to collect such reasonable charge on such excess as is agreed upon between the mortgagor and the mortgagee.

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

(e) *Prepayment of mortgages subject to Part 248.* Where the mortgage described in paragraph (a)(1) of this section is, or prior to assignment to the Commissioner was, insured under section 221(d)(3) of the Act and the mortgagor receives payments from the Commissioner under Part 215 of this chapter or project-based assistance under Parts 880, 881 or 886 of this title, or where the mortgage is, or prior to assignment to the Commissioner was, insured under section 221(d)(5) of the Act, the mortgage may be prepaid in full only in accord-

ance with a plan of action approved by the Commissioner under Part 248 of this title.

[36 FR 24587, Dec. 21, 1971, as amended at 42 FR 62132, Dec. 9, 1977; 51 FR 2359, Jan. 16, 1986; 53 FR 616, Jan. 11, 1988; 53 FR 6801, Mar. 2, 1988; 53 FR 11233, Apr. 5, 1988]

§ 221.525 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest and principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 221.526 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under such contract to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

§ 221.527 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the Commissioner as to each of the following points:

(1) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

ELIGIBLE MORTGAGEES

§ 221.528 Qualification of lenders.

The provisions of §§ 203.1 through 203.9 of Part 203 of this chapter shall govern the eligibility qualifications and requirements of mortgagees under this subpart.

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SUPERVISION OF MORTGAGORS

§ 221.529 Form of regulation by Commissioner.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or reinsurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 221.530 Supervision applicable to all mortgagors.

(a) (1) Except as otherwise provided in paragraph (a)(3) of this section, the mortgagor shall make no charges for accommodations (rents), facilities, or services offered by the project except as HUD's administrative instructions authorize.

(2) On the basis of information that the mortgagor provides on a form prescribed by the Commissioner, the Commissioner will determine the rents for projects (other than those referred to in paragraph (a)(3) of this section), using the sum of the project's operating costs and debt service (as calculated by the Commissioner), and the owner's return on investment, with adjustments for vacancies, the project's non-rental income, and other factors that the Commissioner deems to be appropriate.

(3) Mortgagors with mortgages insured under section 221(d)(4) of the National Housing Act shall determine the charges for accommodations (rents), facilities, or services offered by the project, except as follows:

(i) For a project constructed for occupancy exclusively by elderly or handicapped tenants, the mortgagor may charge tenants for facilities or services offered by the project only as HUD's administrative instructions permit. The mortgagor may not charge for perpetual care or life care.

(ii) For units occupied by tenants assisted under the programs referred to in paragraphs (a)(3) (iii) and (iv) of this section, the mortgagor may charge for facilities and services offered by the project only as the Housing Assistance Payments (HAP) contract, applicable regulations, and HUD's administrative instructions permit. The mortgagor may not impose lesser charges for facilities and services on unassisted tenants than those imposed on assisted tenants.

(iii) Rent adjustments for units occupied by tenants assisted under a section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), or Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies) of this title shall be determined in accordance with the HAP contract, applicable regulations, and HUD's administrative instructions, and shall not, without the prior approval of the Commissioner, exceed rents charged for comparable, unassisted units in the project.

(iv) Rent adjustments for projects with units assisted under Part 886 of this title (Section 8 Housing Assistance Payments Program—Special Allocations) shall be determined under paragraph (a)(2) of this section, or the mortgagor may, with the prior approval of the Commissioner, determine the rents, except that the rents for units occupied by assisted tenants shall be determined in accordance with the HAP Contract, applicable regulations, and HUD's administrative instructions.

(v) The Commissioner will approve rents for units in a project not occupied by tenants receiving section 8 assistance if the mortgagor and the Commissioner determine that such approval is necessary for the project to comply with the requirements of the Internal Revenue Code or State law. If such a determination is made, the Commissioner will approve rents in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the option of the mortgagor.

(vi) The Commissioner will approve rental adjustments, in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the election of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(A) The firm commitment to insure the mortgage under this part was issued before June 1, 1983;

(B) At the time that the mortgagor (or its predecessor in title) (*1*) obtained a firm commitment to insure the mortgage under this part, or (*2*) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(C) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

(vii)(A) The Commissioner will regulate, as provided in paragraph (a)(3)(vii)(B) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(*1*) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine:

(*i*) The maximum charges for accommodations (rents), facilities, and services offered by the project under paragraph (a)(3) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(*ii*) The maximum project rents on the basis of the alternative formula contained in paragraph (a)(3)(iv) of this section for mortgages insured before July 21, 1986, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program, Special Allocations).

(*2*)(*i*) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations); or

(*ii*) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based upon tenant income data to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to decontrol project rentals under paragraph (c)(3) of this section or to use the alternative formula for determining project rentals under paragraph (c)(3)(iv) of this section.

(B) For projects that meet the criteria in paragraph (a)(3)(vii)(A) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approved in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approve these charges and later rent adjustments on the same basis and in the same manner as they were approved immediately before June 1983, except that mortgagors may use the forward-based budgeting provision in 24 CFR 207.19 (e)(ii)(A) of this chapter for purposes of determining project rentals.

(C) Any mortgagor that is subject to this paragraph (d), and that determined

(*1*) the charges for accommodations (rents), facilities, or services offered by the project without the Commissioner's regulation (as provided by paragraph (c)(3) of the section, or

(*2*) project rentals on the basis of the alternative formula contained in paragraph (c)(3)(iv) of this section,

Must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (a)(3)(vii)(B) of this section.

(viii) Any State or local law, ordinance, or regulation regulating the rents of projects subject to this paragraph (a) may be preempted only as provided in Part 246 of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

(b) The mortgagor shall maintain its project, the ground, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the Commissioner.

(c) (1) In all projects, except those involving rehabilitation where the mortgage does not exceed $200,000, a fund for replacements shall be established and maintained with the mortgagee. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(2) For projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies), the replacement reserve provisions of the applicable Section 8 regulation, contained at §§ 880.602, 881.602 or 883.703 respectively, shall apply; except that for partially-assisted Section 8 projects, as defined in Part 880, 881 or 883, whichever is applicable, paragraph (c)(1) of this section shall apply.

(d) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(e) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that, so long as the mortgage is insured or held by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner; and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audit as they may desire to make. The mortgagor shall file with the Commissioner and mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(1) Monthly occupancy reports when required by the Commissioner;

(2) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the Commissioner, certified to by an officer of the mortgagor and, when required by the Commissioner, prepared and certified by a Certified Public Accountant (or other person acceptable to the Commissioner), such reports to be submitted within sixty (60) days after the end of each fiscal year;

(3) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage;

(4) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

(Approved by the Office of Management and Budget under control number 2502-0324)

[36 FR 24587, Dec. 22, 1971, as amended at 48 FR 16674, Apr. 19, 1983; 51 FR 20272, June 4, 1986; 53 FR 15818, May 4, 1988]

§ 221.531 Supervision applicable to general mortgagors.

The following restrictions and regulations will be applicable to general mortgagors:

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity, beneficial certificates of interest may be issued in such amounts and form as may be agreed upon by the mortgagor and the Commissioner.

(b) *Rate of return.* Except as approved by the Commissioner under Part 248 of this chapter, dividends or other distributions as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after:

(1)(i) The payment of:

(A) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Commissioner;

(B) All amounts required to be deposited in the reserve fund for replacements;

(C) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(ii) The segregation of:

(A) An amount equal to the aggregate of all special funds required to be maintained by the project;

(B) All tenant security deposits held.

(2) No distribution of any kind may be made from borrowed funds.

(3) Unless otherwise agreed to by the Commissioner under Part 248 of this chapter, distributions may be made for projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies) only in accordance with the provisions on limitation on distributions of the applicable Section 8 regulation contained at §§ 880.205, 881.205, or 883.306 of this title, respectively; except that for small projects and partially-assisted projects, as defined in Part 800, 881 or 883, whichever is applicable, (b)(1) and (b)(2) of this section shall apply.

(c) [Reserved]

(d) *Mortgagor's equity investment*—(1) *Amount of deposit.* Unless it can be established to the satisfaction of the Commissioner, prior to the final endorsement of the mortgage for insurance, that the mortgagor has an investment in the project, represented by cash expenditures, in an amount equal to three percent (3%) of the total cost of the project as certified by the mortgagor and approved by the Commissioner, there shall be deposited in a special fund an amount equal to the difference between such three percent (3%) and the amount of any such investment for necessary expenses incident to the completion of the project. Disbursements from any such fund, prior to three years from the date of the final or initial-final endorsement of the mortgage for insurance, may be made only with the prior written approval of the Commissioner.

(2) *Cutoff date.* The provisions of paragraph (d)(1) of this section shall be applicable only to those mortgages which have received final endorsement on or before November 15, 1962.

[36 FR 24587, Dec. 22, 1971, as amended at 45 FR 50733, July 31, 1980; 48 FR 16674, Apr. 19, 1983; 49 FR 6715, Feb. 23, 1984; 51 FR 20272, June 4, 1986; 53 FR 11233, Apr. 5, 1988]

§ 221.532 Supervision applicable to limited distribution mortgagors.

(a) The provisions of § 221.531(b) of this part (rate of return) shall apply to limited dividend mortgagors, except

that, unless the Commissioner has agreed otherwise under Part 248 of this chapter, the amount of any allowable distribution or disbursement from surplus cash shall not exceed in any one fiscal year more than 6 percent of the mortgagor's initial equity investment as determined by the Commissioner.

(b) The right of any allowable distribution or disbursement from surplus cash shall be cumulative.

(c) Unless otherwise agreed to by the Commissioner in accordance with Part 248 of this chapter, for projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies), the provisions on limitation on distributions of the applicable Section 8 regulation, contained at 24 CFR 880.205, 881.205, or 883.306 respectively, shall apply; except that for small projects and partially-assisted projects, as defined in Part 880, 881 or 883, of this title whichever is applicable, paragraphs (a) and (b) of this section shall apply.

[53 FR 11234, Apr. 5, 1988]

§ 221.533 Supervision applicable to cooperative and investor sponsor mortgagors.

(a) The mortgagor shall not permit occupancy except under an occupancy agreement or lease approved by the Commissioner.

(b) Except with the prior written approval of the Commissioner, no compensation shall be paid by the corporation to its officers or directors, as such or to any person or corporation for supervising or managerial service. No compensation shall be paid by the corporation to any employee in excess of an amount agreed upon by the Commissioner and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation except on account of approved occupancy charges.

§ 221.534 Supervision applicable to cooperative mortgagors.

(a) A general operating reserve shall be established and maintained as long as the mortgage insurance is in force, in a manner and for the purposes specified in the charter or regulatory agreement.

(b) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be distributed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds. However, for projects insured under this part which are also assisted under Part 880 (Section 8—New Construction), Part 881 (Section 8—Substantial Rehabilitation) or Part 883 (Section 8—State Housing Agencies), the provisions on use of project funds of the applicable Section 8 regulation, contained at §§ 880.601(e), 881.601(e) or § 883.702(e) respectively, shall apply; except that for partially-assisted projects, as defined in Part 880, 881 or 883, whichever is applicable, the first sentence of this paragraph shall apply.

[36 FR 24587, Dec. 22, 1971, as amended at 45 FR 50733, July 31, 1980]

§ 221.535 Supervision applicable to investor-sponsor mortgagors.

(a) *Investor-sponsor's escrow.* The mortgagee shall hold in escrow such amount as the Commissioner determines will be needed, in the event the project is not transferred to a cooperative within 2 years from the date of project completion, to reduce the principal of the mortgage to an amount authorized for a limited distribution mortgagor. The amount held in escrow may be disbursed to the mortgagor if the transfer occurs within the 2-year period. Where the transfer does not occur within such period, the escrow shall be applied against the mortgage or in such other manner as the Commissioner may direct.

(b) *Transfer to cooperative mortgagor.* The consideration for the transfer to a cooperative mortgagor shall be the assumption of the mortgaged indebtedness plus a down payment in an amount which, when added to the original principal, shall not exceed the actual cost of the investor sponsor as approved by the Commissioner.

§ 221.535a Supervision applicable to builder-seller mortgagors.

(a) *Builder-seller's escrow.* The mortgagee shall hold in escrow such amount as the Commissioner determines will be needed, in the event the project is not transferred to a nonprofit mortgagor at final endorsement or within such additional period as may be agreed to in writing by the Commissioner, to reduce the principal of the mortgage to an amount authorized for a limited distribution mortgagor. The amount held in escrow may be disbursed to the mortgagor if the transfer occurs at final endorsement or within such period as may be agreed to by the Commissioner. Where the transfer does not occur within the prescribed period, the escrow shall be applied against the mortgage or in such other manner as the Commissioner may direct.

(b) *Transfer to nonprofit mortgagor.* The consideration for the transfer to the nonprofit mortgagor shall be the assumption of the mortgage indebtedness to which may be added a cash payment in an amount which, when added to the original principal, shall not exceed the builder-seller's actual cost as approved by the Commissioner.

OCCUPANCY REQUIREMENTS

§ 221.536 Occupancy requirements applicable to all mortgagors.

The mortgagor shall certify under oath to the Commissioner that as long as the Commissioner is the insurer, holder or reinsurer of the mortgage, the mortgagor will not:

(a) Use tenant selection procedures that discriminate against families with children, unless the project was specifically designed for housing the elderly or handicapped;

(b) Rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes For the purposes of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy services;

(c) Sell the project as long as the Commissioner is the insurer, holder, or reinsurer of the mortgage, unless the purchaser also certifies.

[36 FR 24587, Dec. 22, 1971, as amended at 51 FR 28548, Aug. 8, 1985]

§ 221.536a Lease and occupancy agreements.

(a) *Form of lease and occupancy agreement.* The owner shall provide and the tenant shall be required to execute a lease in a form approved by the Commissioner. A cooperative member shall be required to execute an occupancy agreement in a form approved by the Commissioner.

(b) *Prohibited lease provisions.* Lease clauses of the nature described below shall not be included in new leases in projects which receive the benefit of subsidy in the form of below-market interest rates under sections 221(d) (3) and (5) of the National Housing Act, and shall be deleted from existing leases entirely by amendment thereto or by execution of a new lease:

(1) *Confession of judgment.* Prior consent by the tenant: (i) To any lawsuit the landlord may bring against the tenant in connection with the lease and (ii) to a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on the part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before an action for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the

tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right: (i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents or (ii) to file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

[48 FR 43313, Sept. 23, 1983; 48 FR 51619, Nov. 10, 1983]

§ 221.537 Additional occupancy requirements; preferred purchasers or tenants.

(a) *Initial occupancy.* In the case of a rental project owned by a mortgagor whose mortgage bears interest at the rate set out in § 221.518(b), initial occupancy shall be restricted to individuals and families determined by the Commissioner as having a low or moderate income.

(b) *Continued occupancy.* Continued occupancy by tenants following a change in income or family composition subsequent to initial occupancy shall be under such conditions as the Commissioner may prescribe.

(c) *Preference for displacees.* In all cases, preference or priority of opportunity to rent dwelling units shall be given to families or single persons who have been displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

(d) *Temporary suspensions.* The occupancy requirements for initial occupancy, as prescribed in paragraph (a) of this section, may be temporarily suspended by the Commissioner for a period not exceeding 1 year. The denial or the approval of a request for such temporary suspension shall be within the sole discretion of the Commissioner, and the approval of a temporary suspension of initial occupancy requirements shall be under such conditions and requirements as the Commissioner may prescribe.

(e) *Disclosure and verification of Social Security Numbers.* Upon determining an individual's or family's eligibility for initial occupancy under paragraph (a) of this section, and at any subsequent reexamination of a tenant's income for continued occupancy under paragraph (b) of this section, the mortgagor must require the individual or family, or the tenant (as appropriate), to comply with the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter. Failure of the individual or family, or the tenant (as appropriate), to meet such requirements will constitute grounds for denying its eligibility for initial occupancy, or for terminating its tenancy, in accordance with the Commissioner's administrative instructions and, if applicable, part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0118, and 2502-0059)

[36 FR 24587, Dec. 22, 1971, as amended at 41 FR 40465, Sept. 20, 1976; 54 FR 39694, Sept. 27, 1989]

§ 221.538 Applicability of prevailing wage requirements.

(a) *In general.* Prevailing wage requirements shall be applicable to mortgage insured under this subpart, except those specified in paragraph (b) of this section, and the compliance with such requirements shall be evidenced at such time and in such manner as the Commissioner may prescribe, as follows:

(1) *Labor Standards.* Any contract, subcontract or building loan agreement executed for the performance of

construction of the project shall comply with all applicable labor standards and provisions of the regulations in 29 CFR Part 5.

(2) *Ineligible contractors.* No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(3) *Ineligible advances.* No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General under 29 CFR Part 5.

(4) *Wage certificate.* No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(b) *Excepted transactions.* The requirements of paragraph (a) of this section shall not be applicable in either of the following instances:

(1) Where the mortgage is executed by a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3) and covers property on which there are located eight or fewer single family dwellings.

(2) Where, in connection with the construction of a project involving a cooperative, investor-sponsor, or rehabilitation sales mortgagor, the Commissioner has waived the requirements and each of the following circumstances occur:

(i) Where the laborers or mechanics not otherwise employed in the construction of such project (or the prospective owners of the individual dwellings, in the case of a rehabilitation sales mortgagor) are to voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project.

(ii) Where the mortgagor establishes to the satisfaction of the Commissioner that amounts saved by the donated services will be credited to the account of the mortgagor.

[36 FR 24587, Dec. 22, 1971, as amended at 49 FR 45127, Nov. 15, 1984]

§ 221.539 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

Insurance of Advances

§ 221.540 Financial requirements.

In order for a mortgage to be eligible for insurance of advances, the following financial requirements must be met by the mortgagor to the satisfaction of the Commissioner:

(a) A mortgagor, other than a nonprofit mortgagor, shall deposit with the mortgagee, or in a depository satisfactory to the mortgagee and under the control of the mortgagee, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to accruals for taxes, ground rents, mortgage insurance premiums, property insur-

ance premiums, and assessments required by the terms of the mortgage:

(1) In the case of new construction, an amount equivalent to not less than two percent of the original principal amount of the mortgage.

(2) In the case of rehabilitation, an amount satisfactory to the Commissioner.

(b) Before initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to the construction of the project. Such cash shall be held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such cash to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any mortgage money. If all or part of the funds required under this paragraph are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds, to pay the cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the mortgagor, that portion must be disbursed in full before the disbursement of the mortgage proceeds.

(c) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to inital endorsement, unless other arrangements acceptable to the Commissioner are made.

(d) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

(e) The mortgagee may accept, in lieu of a cash deposit required by paragraphs (a), (c) and (d) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. If all or part of the funds required under paragraph (b) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept for the portion so provided, in lieu of a cash deposit required by paragraph (b) of this section, either an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution or an agreement, as described in § 207.19(c)(7), which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee. The mortgagee of record may not be the issuer of any letter of credit referred to in this paragraph without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance under the letter of credit.

[36 FR 24587, Dec. 22, 1971, as amended at 48 FR 35392, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

§ 221.541 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mort-

gagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 221.541a Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that: (1) Storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the insured mortgaged properly shall have the responsibility for:

(1) Insuring the components in the name of the mortgagor while in transit and storage; and

(2) Delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall: (A) Obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

[41 FR 8196, Feb. 8, 1979, as amended at 48 FR 15898, Apr. 13, 1983]

§ 221.542 Assurance of completion.

(a) The mortgagor shall furnish assurance of completion of the project in the form of a personal indemnity agreement, corporate surety bonds for payment and performance, or a completion assurance agreement secured by a cash deposit. All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies issuing bonds and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner. The minimum requirements for assurance of completion are as follows:

(1) Where the estimated cost of construction or rehabilitation is $500,000 or less, the assurance of completion will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as the general contractor, or by the individuals operating as the general contractor. Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, the assurance shall be as set forth in paragraph (a)(2) or (3) of this section.

(2) Where the structure contains no elevator or where the structure contains an elevator and is three stories or less, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(3) Where the structure contains an elevator and is four stories or more, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 25 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

(c) Rehabilitation projects involving 11 or less living units shall be excepted from the indemnity agreement, bonding, escrow, or letter of credit requirements of paragraphs (a) and (b) of this section, but the benefits of such exception shall not be available where it has already been applied to two rehabilitation projects (each involving 11 or less living units) currently being constructed and which involve the same mortgagor or general contractor.

[36 FR 24587, Dec. 22, 1971, as amended at 41 FR 41517, Sept. 22, 1976; 48 FR 44070, Sept. 27, 1983]

APPLICATION OF NET INCOME

§ 221.542a Accounting for net income.

All net income received by a nonprofit, builder-seller, investor-sponsor, rehabilitation sales mortgagor shall be accounted for to the Commissioner and shall not be distributed without the prior approval of the Commissioner.

§ 221.543 Advance amortization.

(a) If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result of the rental of the mortgaged property, such net income, to the extent determined by the Commissioner, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset the cost of approved capital improvements.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly

deposits required by the regulatory agreement. In addition to being applicable to commitments issued on or after December 3, 1963, the provisions of this paragraph shall be applicable to commitments outstanding on such date where the mortgage has not received final endorsement.

(b) The provisions of paragraph (a) of this section shall not apply to the following:

(1) Investor-sponsor, builder-seller, nonprofit, or rehabilitation sales mortgagor (the distribution of net income by such mortgagors is controlled by § 221.542a).

(2) Cooperative mortgagors (the use of surplus funds by such mortgagors is prescribed in § 221.534).

(3) Projects involving rehabilitation where the mortgage does not exceed $200,000.

Property Requirements

§ 221.544 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage, except that the property may be subject to an inferior lien, made or held by a Federal, State or local governmental agency or instrumentality as provided in § 221.520(b).

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 1245, Jan. 27, 1972; 48 FR 35392, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984; 50 FR 4647, Feb. 1, 1985; 52 FR 37289, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987]

§ 221.545 Development of property.

(a) *Obligation of mortgagor.* The mortgagor shall be obligated to develop the property as follows:

(1) A mortgagor, other than a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3), shall be obligated to either construct and complete new housing accommodations on the mortgaged property or rehabilitate existing housing accommodations designed principally for residential use.

(2) A rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3) shall be obligated to purchase and rehabilitate existing housing.

(b) *Minimum number of units.* (1) A project, other than a project to be rehabilitated by a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3), shall consist of not less than five dwelling units and may be detached, semidetached, or row houses, or multifamily structures.

(2) A project, where the mortgagor is a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3), shall consist of not less than four single family dwellings or four one-family units in a condominium. The single family dwellings may be detached, semidetached, or row houses. The family units shall be located in a structure or structures concerning which the mortgagor certifies that it intends, upon completion of the proj- ect, to commit the ownership of the project to a plan of apartment ownership approved by the Commissioner.

(c) *Compliance with governmental regulations.* The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

§ 221.546 Commercial and community facilities.

(a) *In general.* The project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

(b) *Urban renewal area projects.* Where the project is located in an

urban renewal area, it may include such nondwelling facilities as the Commissioner determines will be desirable and consistent with the urban renewal plan and contribute to the economic feasibility of the project. Approval of such nondwelling facilities shall only be granted under the following conditions:

(1) That the project will remain predominantly residential.

(2) That the nondwelling facilities will not adversely affect the other business enterprises in the community.

(3) That the mortgagor, in a case involving a mortgage bearing interest at the special below market rate provided in § 221.518(b), agree to waive the right to receive dividends on its equity investment in the portion of the project devoted to commercial facilities.

(c) *Rehabilitation sales projects.* Commercial and community facilities shall not be included in a project involving a mortgage meeting the requirements of § 221.510(a)(3).

§ 221.546a Neighborhood characteristics.

In a case involving a mortgagor meeting the requirements of § 221.510(a)(3), the mortgagor shall establish to the satisfaction of the Commissioner either of the following:

(a) That the property to be rehabilitated is located in a neighborhood which is sufficiently stable and contains sufficient public facilities and amenities to support long-term values.

(b) That the rehabilitation to be carried out by the mortgagor plus its related activities and the activities of other owners of housing in the neighborhood, together with actions to be taken by public authorities, will be of such scope and quality as to give reasonable promise that a stable environment will be created in the neighborhood.

Cost Certification Requirements

§ 221.547 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract in a form meeting the requirements of § 221.548.

(2) To execute a certificate of actual costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over:

(i) In the case of a general or limited distribution mortgagor, 90 percent of actual cost; or

(ii) In the case of all other mortgagors, when the mortgage is to be insured under section 221(d)(4), 90 percent of actual cost; or

(iii) In the case of all other mortgagors, when the mortgage is to be insured under section 221(d)(3), 100 percent of actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

(c) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

[36 FR 24587, Dec. 22, 1971, as amended at 43 FR 39571, Sept. 6, 1978]

§ 221.548 Form of contract.

(a) *In general.* The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by the Commissioner.

(b) *Lump sum contract.* A lump sum contract may be used where it is estab-

lished to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor, and where the mortgage is executed by a public, limited distribution, investor sponsor or general mortgagor. A lump sum contract may also be used where the mortgage is executed by a cooperative mortgagor if the Commissioner makes the foregoing determination as to nonidentity of interest and it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests.

(c) *Cost plus contract.* A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(2) Where the mortgage is executed by a cooperative mortgagor and it is determined by the Commissioner that a cost plus form of contract is required to protect his interests.

(3) Where the mortgage is executed by a nonprofit or builder-seller mortgagor, unless it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

§ 221.548a Disposition of general contractor's holdback.

In those cases in which a conditional commitment has been issued after March 4, 1977, and there is no identity of interest between the mortgagor and general contractor, the following provisions shall be applicable:

(a) The construction contract, whether it be lump sum or cost-plus, shall contain provisions whereby the mortgagor and contractor agree that the general contractor:

(1) Shall submit to the mortgagor, on a monthly basis, a requisition for payment equal to the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior payments made to the general contractor;

(2) Shall accept, for each and every requisition; 90 percent of the amount approved for payment, and shall agree that the remaining 10 percent shall be retained by the mortgagee to be deposited in an escrow account when the construction of the project has been substantially completed, with the exception of minor incomplete on-site construction items, and the following requirements have been met:

(i) All work under the construction contract, requiring inspection by municipal or other governmental authorities having jurisdiction, has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(ii) All required certificates of occupancy or other approvals, with respect to all units of the project, have been issued by State or local governmental authorities having jurisdiction, except that, in the event the mortgagor fails or refuses to file requests for issuance of such certificates, this requirement will be satisfied upon the Commissioner's finding that such certificates or approvals would be forthcoming but for the mortgagor's failure to request their issuance;

(iii) Permissions to occupy for all units of the project have been issued by the Commissioner; and

(iv) In the event a cost-plus form of contract has been used, that the mortgagee has been notified by the HUD field office that the mortgagor has filed the "Contractor's Certificate of Actual Cost" with the Commissioner, except that, if the mortgagor fails or refuses to file such a certificate within a reasonable time, the general contractor's direct submission of the certificate of actual cost may be the basis for the HUD field office notification and the establishment of the escrow.

(3) Shall be entitled to the funds in the escrow account upon compliance with the terms of the Escrow Agreement which shall contain the conditions for release of the escrow account to the general contractor.

(b) The building loan agreement shall provide that:

(1) The mortgagor shall request monthly from the mortgagee an advance of mortgage proceeds for construction items in the amount of the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior advances;

(2) The mortgagor shall accept, for each and every advance, 90 percent of the amount of advance approved;

(3) The mortgagee shall retain the remaining 10 percent of each approved advance;

(4) The mortgagee shall transfer the 10 percent holdback for each advance, minus an amount that is one and one-half times the cost estimated by the Commissioner that is required for the completion of any minor incomplete on-site construction items, to an escrow account when the general contractor completes the construction as determined by the Commissioner and meets the requirements set forth in paragraphs (a)(2) (i), (ii) and (iii); and (a)(2) (i), (ii), (iii) and (iv) of this section for a general contractor who has executed a lump sum form of contract or cost-plus form of contract, respectively.

(5) The 10 percent holdback shall not be construed as an advance from mortgage proceeds by the mortgagee until the mortgagee places the funds in an escrow account in accordance with paragraph (b)(4) of this section; and

(6) The mortgagee and mortgagor agree that, notwithstanding the inclusion in the building loan agreement of the provisions contained in paragraphs (b) (1) through (5) of this section the mortgagee is not required to make any advance of mortgage proceeds if the mortgagor is in default under the building loan agreement, other than the advance of the 10 percent holdback in accordance with paragraph (b)(4) of this section, and except as altered by the provisions of this paragraph, the rights and obligations of the mortgagee and mortgagor under the building loan agreement shall not be affected.

(c) An Escrow Agreement shall be established for the purposes set forth in paragraphs (a) and (b) of this section and the depository under such agreement shall be either the mortgagee or a party designated by the mortgagee. The agreement shall contain provisions for the release of the escrow fund which shall include the requirement that the general contractor submit its certificate of actual cost for approval by the Commissioner and that the certificate be approved by the Commissioner before the contractor shall be entitled to the fund. If the mortgagor and general contractor have entered into a lump sum contract, the requirement for the certificate of actual cost shall not be applicable. The Escrow Agreement shall provide that the depository will:

(1) Release the funds upon request of the general contractor and approval of the Commissioner;

(2) Invest the funds in an interest bearing account, if the mortgagor and general contractor have so agreed, which interest shall be paid to the general contractor when the escrowed funds are released to the general contractor;

(3) Release to the general contractor only that portion of the escrowed funds which do not exceed the amount of costs approved by the Commissioner on the "Contractor's Certificate of Actual Cost", or, in the case of a general contractor which has entered into a lump sum contract, an amount, which when added to payments already received, does not exceed the amount of the lump sum contract. In the event the contractor has not completed construction of the project within the time provided in the construction contract, there shall be deducted from the escrow fund an amount which the Commissioner determines equals the liquidated damages as provided in the construction contract.

(4) Disburse any remaining amount in the escrow fund in accordance with the terms of the escrow agreement; and

(d) The mortgagee's request for approval by the Commissioner of an advance for construction items shall contain a provision that such approval by

the Commissioner shall constitute approval for mortgage insurance of the 10 percent holdback retained by the mortgagee when the retained funds are placed in an escrow account in accordance with this section. The mortgage insurance on the funds retained by the mortgagee shall be effective on the date the funds are transferred to the escrow account.

(e) For the purposes of this section, "substantial completion" shall mean that the Commissioner has issued a final inspection report and that the Commissioner has determined that the contractor has completed the project in accordance with the terms of the construction contract.

[42 FR 765, Jan. 4, 1977; 42 FR 2954, Jan. 14, 1977]

§ 221.549 Certificate as to subcontracts.

(a) If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor must certify in a form prescribed by the Commissioner prior to final endorsement that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.550 Certificate of actual cost—contents in general.

(a) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted prior to final endorsement and upon completion of the improvements to the satisfaction of the Commissioner.

(b) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(1) The cost plus construction contract, including the builder's fee actually paid and approved by the Commissioner; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(2) The architect's fee.

(3) The offsite public utilities and streets not included in paragraph (b)(1) of this section.

(4) The organizational and legal expenses.

(5) The other items of expense approved by the Commissioner.

(c) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders, or partners. Any such payments shall be deducted from the costs determined under paragraph (b) of this section.

(d) *Nonapplicability to rehabilitation sales mortgagors.* The provisions of paragraphs (a) through (c) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.550a Certificate of actual cost—builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit, builder-seller, cooperative, investor-sponsor, or rehabilitation sales mortgagor) an allowance for builder's and sponsor's profit and risk. The amounts of the allowance shall be dependent upon a determination by the Commissioner as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 221.550(b)(1). This allowance shall be 10 percent of the actual cost computed in accordance with § 221.550 excluding the following items:

(1) Any builder's fee actually paid and approved by the Commissioner. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the property involves the financing of repair or rehabilitation.

(c) *Nonidentity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost computed in accordance with § 221.550 excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(d) *Nonapplicability to nonprofit, builder-seller, cooperative, investor-sponsor, or rehabilitation sales mortgagor.* The provisions of paragraphs (a) through (c) of this section shall not be applicable to a project involving a nonprofit, builder-seller, cooperative, investor-sponsor, or rehabilitation sales mortgagor.

§ 221.551 Contractor's certification.

(a) *Certification by general contractor.* Where a cost plus form of contract is used by a cooperative mortgagor or where any other type of mortgagor is required by the Commissioner to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) *Certification by subcontractor.* Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

(c) The provisions of paragraphs (a) and (b) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.552 Records.

(a) The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a fixed fee contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.553 Certificate of public accountant.

(a) In all projects, except those specified in paragraph (b) of this section, the certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and

supporting documents have been examined in accordance with generally accepted auditory standards to the extent deemed necessary to verify the actual costs.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving 40 or less living units or to a project involving a rehabilitation sales mortgagor.

§ 221.554 Value of land.

(a) Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.555 Reduction in mortgage amount—new construction.

(a) If the principal obligation of the mortgage exceeds (1) In the case of general or limited distribution mortgagors, 90 percent, (2) in the case of all other mortgagors, when the mortgage is to be insured under section 221(d)(4), 90 percent, or (3) in the case of all other mortgagors, when the mortgage is to be insured under section 221(d)(3), 100 percent, of the total amount as shown by the certificate of actual cost plus the value of the land, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

[36 FR 24587, Dec. 22, 1971, as amended at 43 FR 39571, Sept. 6, 1978]

§ 221.556 Reduction in mortgage amount—rehabilitation.

(a) In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 221.550, and the applicable cost certification procedure described therein will be required.

(b) If the principal obligation of the mortgage exceeds in the case of:

(1) General or limited distribution mortgagors, 90 percent;

(2) All other mortgagors, when the mortgage is to be insured under section 221(d)(4), 90 percent; or

(3) All other mortgagors, when the mortgage is to be insured under section 221(d)(3), 100 percent of the actual cost of the repair or rehabilitation plus the Commissioner's estimate of the fair market value of the land and existing improvements, the mortgage shall be reduced by the amount of such excess before final endorsement for insurance.

(c) *Nonapplicability to rehabilitation sales mortgagors.* The provisions of paragraphs (a) and (b) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

[49 FR 12697, Mar. 30, 1984]

§ 221.557 Requisites of agreement and certification.

Any agreement, undertaking, statement or certification required by § 221.550 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

§ 221.558 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification as required by § 221.550 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

OTHER ELIGIBLE MORTGAGES

§ 221.559 Eligibility of miscellaneous type mortgages.

(a) A mortgage covering five or more rental units and which meets the requirements of this part, except as modified by this section, shall be eligible for insurance under this subpart.

(b) The mortgage may be accepted for insurance if:

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Pub. L. 849, Seventy-sixth Congress, as amended; Pub. L. 781, Seventy-sixth Congress, as amended; or Pub. L. 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, of any housing (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Pub. L. 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employees' housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preference or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or any agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivison, for the occupancy of veterans (as defined in § 203.12), their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this subparagraph exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (b)(1), (2), (3) and (4) of this section.

§ 221.559a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, or construction of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages) as are judged to be

not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of low and moderate income.

(3) That under all of the special surrounding circumstances, the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 221.559b Eligibility for insurance under section 221(j) of mortgage financing purchase of existing project by cooperative.

(a) A mortgage given to finance the purchase by a cooperative mortgagor from a mortgagor other than a cooperative or a private nonprofit corporation or association shall be eligible for insurance under this subpart, if such mortgage meets the requirements of this subpart, except as modified by this section.

(b) The project being purchased by the cooperative shall have been covered by a mortgage insured under this subsection bearing interest at the below market rate prescribed in § 221.518(b).

(c) The insurance of such mortgage shall be governed by the following:

(1) The amount of the mortgage shall not exceed the lesser of the amounts determined by applying the formulas in paragraph (c)(1) (i) or (ii) of this section as follows:

(i) An amount, the debt service of which can be met from project income remaining after payment of all operating expenses, taxes, and required services, provided the project is operated on a nonprofit basis and the rental charges in effect at the time of purchase are not raised.

(ii) The project's actual cost at the time of completion (as determined by the Commissioner) or the project's fair market value for residential purposes as determined by the Commissioner on the basis of operating the project without the benefit of a below market interest rate mortgage or rent supplement payments and without the controls by the Commissioner over the project imposed by the provisions in this subpart, whichever amount is the greater.

(2) Subject to limitations prescribed in paragraph (c)(1) of this section, it is intended that the mortgage will provide an amount which will enable the seller of the project to realize a net amount out of the sales proceeds sufficient to recover its investment and to retire the outstanding mortgage.

(3) The term of the mortgage may exceed the remaining term of the original mortgage on the project, but in no event may it exceed the Commissioner's estimate of the remaining economic life of the project.

(4) The mortgage shall bear interest at the below market rate prescribed in § 221.518(b).

§ 221.560 Eligibility of refinanced mortgages.

(a) A mortgage given to refinance an existing mortgage insured under the act may be insured under this subpart pursuant to section 223(a)(7) of the act. The new mortgage shall be limited in amount and in term as follows:

(1) The principal of the new mortgage shall not exceed the lowest of these amounts:

(i) The original principal amount of the existing insured mortgage.

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added—

(*a*) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(*b*) The costs, as determined by the Commissioner, of improvements, upgrading or additions required to be made to the property.

(*c*) Loan closing charges.

(iii) The Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property, except

for general or limited distribution mortgagors when the amount shall not exceed 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(2) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determined that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

(b) Notwithstanding any other provision of this subpart, a mortgage given by a mortgagor other than a general mortgagor to refinance a mortgage covering an existing property or project located in an urban renewal area, shall be eligible for insurance under this subpart, provided the Commissioner finds that such insurance will facilitate the occupancy of dwelling units in the property or project by families of low or moderate income or families displaced from an urban renewal area or displaced as a result of governmental action.

(c) The provisions of §§ 221.503 through 221.508 relating to fees and charges shall not be applicable to commitments issued on or before December 31, 1962, for refinancing an existing insured mortgage if:

(1) The mortgage meets the requirements of paragraph (a) of this section and bears interest not in excess of the rates provided in § 221.518(b); or

(2) The mortgage meets the requirements of paragraph (b) of this section and bears interest not in excess of the rates prescribed in § 221.518(b).

(d) The mortgage may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

[36 FR 24587, Dec. 22, 1971, as amended at 53 FR 8884, Mar. 18, 1988]

§ 221.560a Eligibility of mortgages covering housing near military installations.

(a) A Mortgage financing the construction, repair or rehabilitation of property located near any installation of the United States Armed Forces in a federally impacted area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all the requirements of this subpart, except that the property or project does not have to be economically sound or constitute an acceptable risk if:

(1) The Secretary finds that the benefits to be derived from such use of the property outweigh the risk of probable cost to the Government, and

(2) The Secretary of the Defense certifies that there is no intention to curtail substantially the personnel assigned or to be assigned to such installation.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 238(c) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

[42 FR 59675, Nov. 18, 1977]

§ 221.561 Reinsurance of Commissioner-held mortgages.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under any section or title of the Act.

TITLE

§ 221.562 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 221.563 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him and a policy of title insurance covering such property, as provided in paragraph (a)(1) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a) (2), (3), or (4) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project involving rehabilitation where the mortgage does not exceed $200,000.

EXTENSION OF TIME

§ 221.564 Actions by Commissioner.

Where the mortgagee or lender has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 221.749 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart D—Contract Rights and Obligations—Moderate Income Projects

§ 221.751 Cross-reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 221 of the National Housing Act, except the following provisions:

Sec.
207.252 First, second, and third premium.
207.252a Premiums—operating loss loans.
207.259 Insurance benefits.

(b) For the purposes of this subpart, all references in Part 207 of this chapter to section 207 of the act shall be construed to refer to section 221 of the Act, and all references to Part 207 shall be construed to refer to this subpart.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972; 42 FR 59675, Nov. 18, 1977]

§ 221.755 Premiums first, second, third and operating loss loans.

All of the provisions of §§ 207.252 and 207.252a of this chapter, relating to mortgage insurance premiums, apply to mortgages insured under this subpart that provide for interest at

the market rate prescribed in § 221.518(a) except that as to mortgages insured under this subpart pursuant to section 238(c) of the Act all mortgage insurance premiums due in accordance with §§ 207.252 and 207.252a shall be calculated on the basis of one percent. The provisions of § 207.252. shall not apply to:

(a) Mortgages that provide for interest during the construction period at the market rate and for interest subsequent to final endorsement at the below market rate prescribed in § 221.518(b); or

(b) Mortgages encumbering a project in which all units are covered by an annual contributions contract issued pursuant to section 10(c) of the Housing Act of 1937.

[36 FR 24587, Dec. 22, 1971, as amended at 42 FR 59675, Nov. 18, 1977]

§ 221.761 Forbearance relief.

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of regular mortgage payments for a specified period of time, if the following requirements are met:

(1) The mortgage was endorsed for insurance on or after July 7, 1961.

(2) The Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time and evidences such determination by written approval of the forbearance agreement.

(b) The time specified in § 207.258(a) of this chapter, within which a mortgagee shall give the Commissioner written notice of its intention to file an insurance claim, shall be suspended for the period of time specified in the forbearance agreement as long as the mortgagor complies with the requirements of such agreement.

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its decision to either assign the mortgage to the Commissioner or to acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 221.763 shall be applicable.

[36 FR 24587, Dec. 22, 1971, as amended at 51 FR 27838, Aug. 4, 1986]

§ 221.762 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except as provided in this section:

(a) *Method of payment.* All of the insurance benefits provided by § 207.259 (b) or (c) of this chapter shall be paid in cash unless the mortgagee files with the application a written request for payment in debentures. If such a request is made, payment will be made in debentures with a cash payment to adjust any difference between the total amount of the insurance settlement and the amount of the debentures issued.

(b) *Below market interest rate mortgages.* Where the mortgage has been finally endorsed and the special below market interest rate provided in § 221.518(b) is applicable as of the date of default, the 1 percent deduction from insurance benefits prescribed in § 207.259(b)(2)(iv) of this chapter shall not be applicable.

(c) *Mortgages financed with section 11(b) obligations.* Where the funds for a mortgage loan are provided by obligations that are tax-exempt under section 11(b) of the United States Housing Act of 1937 (24 CFR Part 811), the one percent deduction from insurance benefits prescribed in § 207.259(b)(2)(iv) of this chapter shall not be applicable to claims with respect to multifamily rental housing projects for which a firm commitment for mortgage insurance was issued on or after March 12, 1979.

[36 FR 24587, Dec. 22, 1971, as amended at 44 FR 40890, July 13, 1979]

§ 221.763 Special insurance benefits—forbearance relief cases.

(a) In the case of a mortgage that provides for payment of interest at the market rate prescribed in § 221.518(a), if the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance agreement, the mortgagee shall be entitled to obtain a special insurance payment in cash, in lieu of the insurance benefits otherwise provided under this subpart. To receive the special insurance payment, the mortgagee shall assign the mortgage to the Commissioner in compliance with the requirements of § 207.258(b) of this chapter.

(b) The special insurance benefit to the mortgagee shall be a cash payment computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, there shall be included in the cash payment an amount equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the payment is made; except that when the mortgagee fails to meet any of the applicable requirements of § 207.258(b) of this chapter and § 221.761(c) within the specified times and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such debenture interest allowance shall be computed only to the date on which the particular required action should have been taken.

§ 221.770 Assignment option.

A mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 (or, in the Direct Endorsement program described in 24 CFR 200.163, a property appraisal report signed by the mortgagee's approved underwriter on or before November 30, 1983) has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided that the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with § 221.780.

[49 FR 12698, Mar. 30, 1984]

§ 221.775 Option period.

The mortgagee may exercise its option to assign within one year following the twentieth anniversary of the date the mortgage was finally endorsed for insurance.

§ 221.780 Issuance of debentures.

Upon the exercise of the assignment option and the satisfactory performance of the requirements as to assignment set out in § 207.258 of this chapter, the Commissioner shall issue to the assignor mortgagee debentures having a total face value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

§ 221.785 Date of maturity of debentures.

The debentures issues pursuant to the exercise of an assignment option shall be dated as of the date the mortgage is assigned to the Commissioner and shall mature 10 years after such date.

§ 221.790 Debenture interest rate.

The debentures issued pursuant to the exercise of an assignment option shall bear interest at the "going Fed-

eral rate" at date of issuance. The "going Federal rate" means the annual rate of interest specified by the Secretary of the Treasury as applicable to the 6-month period which includes the issuance date of the debentures. The Secretary of the Treasury shall determine this applicable rate by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such 6-month period, on all outstanding marketable obligations of the United States having a maturity date of 8 to 12 years from the first day of May or November, as the case may be. If there should be no outstanding marketable obligations of the United States having the 8 to 12 year maturity at the time the Secretary of the Treasury is required to determine the debenture rate involved, the obligation next shorter than 8 years and the obligation next longer than 12 years respectively shall be used.

Subpart E—Servicing Responsibilities—Low Cost Homes

§ 221.800 Cross-reference.

All of the provisions of Subpart C, Part 203 of the chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 221 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48204, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

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Subpart C—Servicing Responsibilities

222.400 Cross-reference.

AUTHORITY: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24605, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 222.1 Cross-reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply with full force and effect to mortgages insured under section 222 of the National Housing Act except the following provisions:

Sec.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.24 Application of payments.
203.31 Owner-occupancy in military service cases.

Sec.
203.38 Location of dwelling.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.50 Eligibility of rehabilitation loans.
203.51 Negotiated interest rate.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 222 of the National Housing Act.

[36 FR 24605, Dec. 22, 1971, as amended at 44 FR 46836, Aug. 9, 1979; 45 FR 76389, Nov. 18, 1980; 47 FR 16779, Apr. 20, 1982; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 222.2 Definition of terms.

As used in this subpart the terms—

(a) "Secretary" shall mean the Secretary of Defense, or, in the case of the U.S. Coast Guard, the Secretary of Transportation, or, in the case of the U.S. National Oceanic and Atmospheric Administration, the Secretary of Commerce. "Secretary" shall also mean any officer or employee designated by the above-named Secretaries to issue certificates of eligibility and certificates of termination.

(b) "Certificate of eligibility" means the official certificate issued by the Secretary to the Federal Housing Commissioner which established that the person designated on the certificate as the serviceman has met the eligibility requirements set forth in section 222 of the National Housing Act as amended.

(c) "Serviceman" means a person to whom the Secretary has issued a certificate of eligibility.

(d) "Period of ownership by serviceman," means that period of time during which a service branch is required to pay mortgage insurance premiums to the Federal Housing Commissioner, commencing with the date the Commissioner endorses a mortgage for insurance and terminating when the Secretary furnishes the Commissioner with a certificate indicating that the service branch will no longer be liable for payment of the insurance premiums to the Commissioner.

[36 FR 24605, Dec. 22, 1971, as amended at 37 FR 76, Jan. 5, 1972]

§ 222.3 Maximum mortgage amounts—dollar limitation.

The mortgage shall involve a principal obligation not in excess of the dollar limitation for a one-family residence set forth in § 203.18(a)(1) or § 203.18b or for a one-family unit in a condominium project set forth in § 234.27, except that a mortgage meeting the requirements of §§ 203.18(d), 221.10 or 221.11 shall not exceed the dollar limitation provided in the applicable section.

[45 FR 76389, Nov. 18, 1980]

§ 222.4 Maximum mortgage amount; ratio of loan-to-value limitation.

The mortgage shall not exceed the lesser of the following:

(a) 97 percent of the first $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 95 percent of such value in excess of $25,000 if the mortgage covers a dwelling which:

(1) Was approved for mortgage insurance prior to the beginning of construction, or

(2) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs prior to the beginning of construction, or

(3) Was completed more than one year prior to the date of the application for mortgage insurance, or

(4) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction.

(b) 90 percent of the entire appraised value of the property, as of the date the mortgage is accepted for insurance, if the dwelling does not meet the requirements of paragraph (a) of this section.

(c) An application for mortgage insurance filed prior to November 1, 1965 need not meet the conditions set forth in paragraphs (a) (1), (2), and (3) of this section.

[36 FR 24605, Dec. 22, 1971, as amended at 42 FR 57435, Nov. 2, 1977; 45 FR 46378, July 10, 1980; 47 FR 33495, Aug. 3, 1982; 54 FR 39525, Sept. 27, 1989]

§ 222.5 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

§ 222.6 Application of payments.

(a) Notwithstanding the provisions of § 203.24 of this chapter and until such time as the mortgagee has been notified by the Commissioner that the period of ownerships by serviceman has been terminated the monthly payments to be made by the mortgagor shall be applied to the following items in the order set forth:

(1) Ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums:

(2) Service charge, if any;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage; and

(5) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

(b) After receipt of notification from the Commissioner that the period of ownership by serviceman has been terminated the mortgagee shall apply all monthly payments received from the mortgagor in the order set forth in § 203.24 of this chapter.

[36 FR 24605, Dec. 22, 1971, as amended at 37 FR 25231, Nov. 29, 1972; 50 FR 25915, June 24, 1985]

§ 222.7 Use of mortgage proceeds.

The proceeds of mortgages shall be used for the purpose of financing the construction or purchase of an eligible dwelling by a serviceman.

§ 222.8 Eligible mortgagors.

A mortgagor must meet the requirements of §§ 203.32 through 203.36 of this chapter and in addition must hold a certificate of eligibility issued by the Secretary indicating that the mortgagor meets the eligibility requirements set forth in section 222 of the National Housing Act as amended.

§ 222.9 Eligible types of dwellings.

The mortgage shall involve one of the following types of dwellings:

(a) A single family dwelling.

(b) A one-family unit in a condominium project, together with an individual interest in the common areas and facilities serving the project.

§ 222.10 Requirements for family unit in condominium.

Where the dwelling involved is a one-family unit in a condominium project, the following additional requirements shall be met:

(a) *Plan of apartment ownership.* The project in which the family unit is located shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Commissioner and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(b) *Certificate by mortgagee.* The mortgagee shall certify as to each of the following:

(1) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(2) That the mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(3) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(c) *FHA controls for consumer and public interest.* The Commissioner may require the execution of a regulatory agreement which shall be made applicable to any association of owners

and to any subsequent owner of a family unit. The Commissioner may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(d) *Mortgage covenant concerning common expenses and assessments.* The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

(e) *Definition of term "assessment".* As used in the mortgage, the term "assessment", except where it refers to assessments and charges by the Association of Owners, shall mean special assessments by State or local governmental agencies, districts or other public taxing or assessing bodies.

[36 FR 24605, Dec. 22, 1971, as amended at 53 FR 34283, Sept. 6, 1988]

§ 222.50 Transfer of insurance.

The insurance of a mortgage pursuant to §§ 203.1 et seq. (Part 203, Subpart A); §§ 213.501 et seq. (Part 213, Subpart C); §§ 220.1 et seq. (Part 220, Subpart A); §§ 221.1 et seq. (Part 221, Subpart A); §§ 234.1 et seq. (Part 234, Subpart A); §§ 235.1 et seq. (Part 235, Subpart A); §§ 237.1 et seq. (Part 237, Subpart A); §§ 809.1 et seq. (Part 809, Subpart A); or §§ 810.1 et seq. (Part 810, Subpart C); all of this chapter, covering a single-family dwelling or a family unit in a condominium project may, with the approval of the Commissioner and upon the request by the mortgagee, be transferred for insurance under this subpart, if the mortgage indebtedness has been assumed by a serviceman who holds a certificate of eligibility issued by the Secretary and who becomes the owner of the property and either occupies the property or certifies that his failure to do so is the result of his military assignment, or, in the case of the Coast Guard or U.S. National Oceanic and Atmospheric Administration, other assignment.

[37 FR 76, Jan. 5, 1972]

WAIVERS

§ 222.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations

§ 222.251 Cross-reference.

(a) The provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act which refer to the mortgagee or the service branch, as the case may be, in connection with mortgages insured under section 222 of the National Housing Act. In addition, all of the provisions in Subpart B, Part 203 of this chapter, covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 222 of the National Housing Act except the following provisions:

Sec.
203.259a Scope.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.389 Waived title objections.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.

Sec.

203.438 Mortgages on Indian land insured pursuant to § 248 of the National Housing Act.
203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.
203.440 Et seq. Insured home improvement loans.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 222 of the National Housing Act, and all references to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24605, Dec. 22, 1971, as amended at 48 FR 28807, June 23, 1983; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 222.252 Definition of terms.

The definitions set forth in §§ 203.251 and 222.2 of this chapter shall apply with full force and effect to this subpart and in addition the terms—

(a) "Service branch" means the military service, Coast Guard, or U.S. National Oceanic and Atmospheric Administration of which the mortgagor is a member at the time of the issuance of a mortgage insurance certificate or the endorsement of the credit instrument by the Commissioner pursuant to section 222 of the National Housing Act.

(b) "Certificate of termination" means the official notice issued by the Secretary to the Federal Housing Commissioner advising the Commissioner that the period of ownership by a serviceman has been terminated and the service branch will no longer be responsible for payment of mortgage insurance premiums.

[36 FR 24605, Dec. 22, 1971, as amended at 37 FR 76, Jan. 5, 1972]

§ 222.253 Annual mortgage insurance premiums and charges.

The service branch shall during the period of ownership by a serviceman have the responsibility for payment of all mortgage insurance premiums and charges. The mortgagee shall be responsible for payment of all such premiums or charges after it has been notified by the Commissioner that the period of ownership by the serviceman has been terminated.

§ 222.255 Pro-rata refund in the event of prepayment.

Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the service branch or to the mortgagee, as the case may be, for the account of the mortgagor an amount equal to the pro-rata portion of the current annual mortgage insurance premium and insurance charge in the case of open-end advances theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs: *Provided*, That no such refund will be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 222.260 Waived title objections.

(a) *General provisions.* All of the provisions of § 203.389 of this chapter (relating to the waiver by the Commissioner of objections to title) shall apply to mortgages insured under this subpart, with the exception of mortgages involving condominium units.

(b) *Provisions applicable to condominium units.* Where the mortgage involves a condominium unit, the Commissioner shall not object to title by reason of the following matters:

(1) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(2) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(3) Encroachments on the subject property by improvements on adjoining property, provided such encroachments do not interfere with the use of

any improvements on the subject property.

(4) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property.

(5) Customary buildings or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

SPECIAL PROVISIONS APPLICABLE ONLY TO MORTGAGES INVOLVING CONDOMINIUM UNITS

§ 222.265 Changes in the plan of apartment ownership.

The mortgagee shall notify the Commissioner of any changes in the plan of apartment ownership and in the administration of the property. Such notification shall be given either at the time of the conveyance of the property or at the time of the assignment of the mortgage. Any changes in such plan shall require approval by the Commissioner.

§ 222.270 Condition of the multifamily structure.

(a) When a family unit is conveyed or a mortgage is assigned to the Commissioner, the family unit and the common areas and facilities (including restricted common areas and facilities) designated for the particular unit shall be undamaged by fire, earthquake, tornado, or boiler explosion, except if the property has been damaged, either of the following actions shall be taken:

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Commissioner.

(2) With the prior approval of the Commissioner, the property may be conveyed or the mortgage assigned to the Commissioner without repairing the damage. In such instances, the Commissioner shall deduct from the insurance benefits either his estimate of the decrease in value of the family unit or the amount of any insurance recovery received by the mortgagee, whichever is the greater.

(b) If the property has been damaged by fire and such property was not covered by fire insurance at the time of the damage, the mortgagee may convey the property or assign the mortgage to the Commissioner without deduction from the insurance benefits for any loss occasioned by such fire if the following conditions are met:

(1) The property shall have been covered by fire insurance at the time the mortgage was insured.

(2) The fire insurance shall have been later canceled or renewal shall have been refused by the insuring company.

(3) The mortgagee shall have notified the Commissioner within 30 days (or within such further time as the Commissioner may approve) of the cancellation of the fire insurance or of the refusal of the insuring company to renew the fire insurance. This notification shall have been accompanied by a certification of the mortgagee that diligent efforts were made, but it was unable to obtain fire insurance coverage at reasonably competitive rates and that it will continue its efforts to obtain adequate fire insurance coverage at competitive rates.

§ 222.275 Assessment of taxes.

When a family unit is conveyed to the Commissioner or a mortgage is assigned to the Commissioner, the unit shall be assessed and subject to assessment for taxes pertaining only to that unit.

§ 222.280 Certificate of tax assessment.

The mortgagee shall certify, as of the date of filing for record of the deed or assignment of the mortgage to the Commissioner, that the family unit is assessed and subject to assessment for taxes pertaining to that unit.

§ 222.285 Certificate or statement of condition.

(a) At the time of the assignment of the mortgage or conveyance of the property to the Commissioner, the mortgagee shall, as of the date of the filing for record of the deed or assignments, either:

(1) Certify that the conditions of § 222.270(a) have been met; or

(2) Submit a statement describing any such damage that may still exist.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or its statement as to damage shall be accepted by the Commissioner as establishing the condition of the family unit and the common areas and facilities including restricted common areas and facilities designated for the particular unit.

§ 222.290 Cancellation of hazard insurance.

The provisions of § 203.382 of this chapter are incorporated by reference and shall apply to hazard insurance policies carried solely for the family unit.

Subpart C—Servicing Responsibilities

§ 222.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 222 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48204, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 224—ARMED SERVICES HOUSING—MILITARY PERSONNEL [SEC. 803]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.

224.251 Cross-reference.
224.255 Mortgage insurance premiums.
224.265 Insurance benefits.
224.275 Applicability to outstanding mortgages and commitments.

AUTHORITY: Secs. 803, 807, 69 Stat. 647, as amended, 651; 12 U.S.C. 1748b, 1748f, unless otherwise noted.

SOURCE: 36 FR 24608, Dec. 22, 1971, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 224.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to armed services housing mortgages for military personnel insured under section 803 of the National Housing Act except the following provisions:

Sec.

207.252 First, second, and third premiums.
207.259 Insurance benefits.
207.264 Effective date.

(b) For the purposes of this part all references in Subpart B, Part 207 of this chapter to section 207 of the act shall be construed to refer to section 803 of the act.

[36 FR 24608, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972]

§ 224.255 Mortgage insurance premiums.

(a) The mortgagee, upon the initial endorsement of the mortgage for insurance, shall agree to pay to the Commissioner a first insurance premium of $1 per project for the construction period.

(b) On the date of the first principal payment on account of the mortgage, the mortgagee shall pay the first insurance premium and a second premium equal to one-quarter of 1 percent of the average outstanding principal obligation for the following year.

(c) (1) Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary date of the first principal payment, shall pay an annual mortgage insurance premium.

(2) With respect to mortgage insurance premiums:

(i) Due prior to August 1, 1965, the amount of the annual premium payment shall be equal to one-quarter of 1 percent per annum of the amount of

the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

(ii) Due on or after August 1, 1965, the amount of the annual premium payment shall be equal to one-sixth of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

(d) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(e) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums, except the first premium, are payable in advance and no refund will be made of any portion thereof except that at the time of prepayment, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to such prepayment.

(f) Upon agreement between the mortgagor and mortgagee, approved by the Commissioner, premiums due under this section may be paid directly by the mortgagor to the Commissioner. Upon such agreement, the obligation of the mortgagor to make payments to the mortgagee for mortgage insurance premiums and the obligation of the mortgagee to pay such premiums to the Commissioner shall cease so long as the agreement remains in effect and shall be reinstated upon its revocation.

(g) A mortgage may be finally endorsed for insurance after it has been assigned to the Commissioner for the purpose of making effective the military guarantee of payment and effecting an orderly closing of the transaction. In such event, them mortgage insurance premium of $1 per project, provided in paragraph (a) of this section, shall cover both the construction period and the period of time the mortgage is held by the Commissioner, and the references in paragraphs (b), (c), and (d) of this section to the date of first principal payment shall be construed to mean the first day of the month following the date of the transfer of the mortgage from the Commissioner to another mortgagee.

§ 224.265 Insurance benefits.

All of the provisions of § 207.259 of this chapter relating to the payment of insurance benefits apply to mortgages insured under this part, except in cases involving assignment of the mortgage to the Commissioner, the 1 percent deduction specified in § 207.259(b)(2)(iv) of this chapter shall not be applied in computing such benefits.

§ 224.275 Applicability to outstanding mortgages and commitments.

The provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after August 15, 1955.

PART 225—MILITARY HOUSING INSURANCE [SEC. 803]

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

Sec.
225.251 Cross-reference.
225.255 Mortgage insurance premiums.
225.265 Insurance benefits.

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

AUTHORITY: Sec. 803, 69 Stat. 647, sec. 807, 69 Stat. 651; 12 U.S.C. 1748b, 1748f, unless otherwise noted.

§ 225.251 Cross-reference.

(a) All of the provisions of Subpart B of Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act, apply to mortgages insured pursuant to section 803 of the National Housing Act as in effect prior to August 11, 1955, except the following provisions:

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Sec.
207.252 First, second, and third premiums.
207.259 Insurance benefits.

(b) For the purposes of this subpart, all references in Subpart B of Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 803 of the Act as in effect prior to August 11, 1955.

(Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535)

[36 FR 24609, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972]

§ 225.255 Mortgage insurance premiums.

The payment of mortgage insurance premiums shall be governed by the provisions of § 207.252 of this chapter except that:

(a) Where the mortgage insurance premium is due prior to August 1, 1965, the amount of the annual premium payment shall be equal to one-half of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

(b) Where the property covered by the mortgage has been acquired by the Secretary of Defense or his designee and the mortgage insurance premium is due on or after August 1, 1965, the amount of the annual premium payment shall be equal to one-sixth of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

(c) Where the property has not been acquired by the Secretary of Defense or his designee, the amount of the annual mortgage insurance premium payment, regardless of when due, shall be equal to one-half of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

[36 FR 24609, Dec. 22, 1971]

§ 225.265 Insurance benefits.

The payment of insurance benefits shall be governed by the provisions of § 207.259 of this chapter, except that debentures shall mature as follows:

(a) Where the mortgage was insured pursuant to a commitment issued prior to August 13, 1954, the debentures shall mature 10 years after the date of issue of such debentures.

(b) Where the mortgage was insured pursuant to a commitment issued on or after August 13, 1954, the debentures shall mature 20 years after the date of issue of such debentures.

[36 FR 24609, Dec. 22, 1971]

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

Subpart A—Eligibility Requirements

Sec.
226.1 Cross-reference.
226.2 Certificate of need.
226.3 Employment status certificate.
226.4 Maximum mortgage amount—dollar limitation.
226.5 Maximum mortgage amount; loan-to-value limitation.
226.6 [Reserved]
226.7 Mortgagor's minimum investment.
226.8 Eligible mortgagors.
226.9 Requirements as to risk and economic soundness.
226.10 Guarantee of Fund from loss.

WAIVERS

226.248 Waivers.

Subpart B—Contract Rights and Obligations

226.251 Cross-reference.

Subpart C—Servicing Responsibilities

226.300 Cross-reference.

AUTHORITY: Secs. 211, 807, 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24609, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 226.1 Cross-reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages under section 203 of the National Housing Act apply with equal force and effect to mortgages insured pursu-

ant to section 809, except the following provisions:

Sec.
203.18 Maximum mortgage amount.
203.18a Solar energy systems
203.18b Increased mortgage amount.
203.28 Economic soundness of project.
203.42 Rental properties.
203.43a Eligibility of housing in declining urban areas.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.50 Eligibility of rehabilitation loans.
203.51 Negotiated interest rate.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 809 of the National Housing Act.

[36 FR 24609, Dec. 22, 1971, as amended at 45 FR 76389, Nov. 18, 1980; 47 FR 16779, Apr. 20, 1982; 51 FR 21875, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 226.2 Certificate of need.

(a) *Issuance by Secretary of Defense.* No mortgage covering property located at or near a military installation shall be insured unless the Secretary of Defense, or his designee, shall have certified to the Commissioner that the housing is necessary to provide adequate housing for civilians employed in connection with a research or development installation of one of the military departments of the United States or a contractor thereof, and that there is no present intention to substantially curtail the number of the civilian personnel assigned or to be assigned to such installation. The certification shall be conclusive evidence to the Commissioner of the need for such housing.

(b) *Issuance by Administrator of the National Aeronautics and Space Administration.* A mortgage may be insured under this subpart secured by property which is intended to provide housing for a person employed or assigned to duty at or in connection with a research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation. The mortgage shall not be insured, however, unless the Administrator of the National Aeronautics and Space Administration or his designee shall have certified to the Commissioner that the housing is necessary to provide adequate housing for civilian or military personnel employed or assigned to duty at or in connection with a research or development installation of the National Aeronautics and Space Administration and that there is no present intention to substantially curtail the number of the personnel assigned or to be assigned to such installation. This certification shall be conclusive evidence to the Commissioner of the need for such housing.

(c) *Issuance by U.S. Nuclear Regulatory Commission.* A mortgage may be insured under this subpart secured by property which is intended to provide housing for a person employed at a research or development installation of the U.S. Nuclear Regulatory Commission and which is located at or near such installation. The mortgage shall not be insured, however, unless the U.S. Nuclear Regulatory Commission shall have certified to the Commissioner that the housing is necessary to provide adequate housing for persons employed at or in connection with a research or development installation of the U.S. Nuclear Regulatory Comission and that there is no present intention to substantially curtail the number of the personnel assigned or to be assigned to such installation. This certification shall be conclusive evidence to the Commissioner of the need for such housing.

§ 226.3 Employment status certificate.

(a) *Certificate by Secretary of Defense.* No mortgage covering property at a military installation shall be insured unless the Secretary of Defense, or his designee, has issued a certificate indicating that the mortgagor: (1) Requires housing; (2) is, on the date of the certificate, a civilian employee at a research or development installation

of one of the military departments of the United States, or contractor thereof, at a research or development installation; and (3) is considered by the military department to be an essential, nontemporary employee at such date. Such certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and of the mortgagor's need for housing.

(b) *Certificate by Administrator of National Aeronautics and Space Administration.* (1) An employment status certificate shall be required in connection with a mortgage secured by property which is intended to provide housing for a person employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation. No mortgage shall be insured unless the Administrator of the National Aeronautics and Space Administration, or his designee, has issued a certificate indicating that the mortgagor on the date of the certificate:

(i) Requires housing;

(ii) Is a civilian employee or one of the military personnel employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration, or is an employee of a contractor of such Administration who is employed at a research or development installation; and

(iii) Is considered by the National Aeronautics and Space Administration to be an essential, nontemporary employee of such Administration or of a contractor thereof.

(2) The certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and the mortgagor's need for housing.

(c) *Certificate by U.S. Nuclear Regulatory Commission.* (1) An employment status certificate shall be required in connection with a mortgage secured by property which is intended to provide housing for a person employed or assigned to duty at a research or development installation of the U.S. Nuclear Regulatory Commission and which is located at or near such installation. No mortgage shall be insured unless the U.S. Nuclear Regulatory Commission has issued a certificate indicating that the mortgagor on the date of the certificate:

(i) Requires housing;

(ii) Is a civilian employee or one of the military personnel employed or assigned to duty at a research or development installation of the U.S. Nuclear Regulatory Commission, or is an employee of a contractor of such Commission who is employed at a research or development installation; and

(iii) Is considered by the U.S. Nuclear Regulatory Commission to be an essential, nontemporary employee of such Commission or of a contractor thereof.

(2) The certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and the mortgagor's need for housing.

§ 226.4 Maximum mortgage amount—dollar limitation.

The mortgage shall involve a principal obligation not in excess of the dollar limitation set forth in § 203.18(a)(1) or § 203.18b.

[45 FR 76389, Nov. 18, 1980]

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

(a) In addition to meeting the dollar limitation set forth in § 226.4, the mortgage shall be in an amount not exceeding the following:

(1) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all require-

ments which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(2) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(1) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value to the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

(b) Veteran qualifications: The special veteran terms provided in paragraph (a) of this section shall only be applicable to a mortgage covering a single family dwelling executed by a mortgagor who submits to the Commissioner one of the following certifications.

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days; or

(2) A Certificate of Eligibility from the Department of Veterans Affairs establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Department of Veterans Affairs establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had not previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months of continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(*2*) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Department of Veterans Affairs has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) That the person was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD-214 shall be submitted with the certification).

[36 FR 24609, Dec. 22, 1971, as amended at 45 FR 51771, Aug. 5, 1980; 50 FR 19926, May 13, 1985; 52 FR 5535, Feb. 25, 1987; 54 FR 39525, Sept. 27, 1989]

§ 226.6 [Reserved]

§ 226.7 Mortgagor's minimum investment.

At the time the mortgage is insured, the mortgagor shall have paid in cash

or its equivalent the following minimum amount.

(a) In all cases (except those involving a veteran meeting the requirements of § 226.5(b)), the minimum investment shall be at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount, as the Commissioner may determine.

(b) In a case involving a veteran meeting the requirements of § 226.5(b), the minimum investment shall be $200 which may include settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

§ 226.8 Eligible mortgagors.

No mortgage shall be insured unless executed by a mortgagor who meets the employment status requirements as set forth in § 226.3 and who at the time of insurance is the owner of the property and either occupies the property or certifies that his failure to do so is the result of a change of his employment.

§ 226.9 Requirements as to risk and economic soundness.

A mortgage may be accepted for insurance by the Commissioner without regard to any requirement that the property or project be economically sound or an acceptable risk.

§ 226.10 Guarantee of Fund from loss.

If the Commissioner determines that the insurance of mortgages on housing as certified by the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, or the Chairman of the U.S. Nuclear Regulatory Commission is not an acceptable risk, he may require the Secretary, the Administrator, or the Chairman, as the case may be, to guarantee the General Insurance Fund against loss with respect to mortgages insured under this subpart.

Waivers

§ 226.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations

§ 226.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 809 of the National Housing Act except the following provisions:

Sec.
203.259a Scope.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund Income or Loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.
203.440 et seq. Insured home improvement loans.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 809 of the act and all references to the Mutual

Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24609, Dec. 22, 1971, as amended at 48 FR 28807, June 23, 1983; 51 FR 21875, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

Subpart C—Servicing Responsibilities

§ 226.300 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 809 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48204, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS [SEC. 810]

Subpart A—Eligibility Requirements—Projects

Sec.
227.1 Cross-reference.
227.5 Definitions of terms as used in this subpart.
227.10 Preference in sale or rental.
227.15 Insurance risk and economic soundness.
227.20 Reduced mortgage amount—leaseholds.
227.25 Eligible mortgages—form.
227.27 Prepayment privilege; prepayment and late charge.
227.30 Eligible mortgagors.
227.35 Maximum mortgage amounts—Multifamily Rental Project.
227.40 Maximum mortgage amounts—Multifamily Sales Project.
227.45 Increased mortgage amounts—high cost areas.
227.47 Loans to cover 2-year operating loss.
227.50 Mortgage release provisions.
227.55 Cost certification.

Subpart B—Contract Rights and Obligations—Projects

227.251 Cross-reference—Multifamily, Sales or Rental Project.

Subpart C—Eligibility Requirements—Individual Mortgages

227.501 Cross-reference.
227.505 Definitions of terms as used in this subpart.
227.510 Preference in sale or rental.
227.515 Insurance risk and economic soundness.
227.520 Reduced mortgage amounts—leaseholds.
227.525 Eligible mortgages—form.
227.530 Eligible mortgagors.
227.535 Maximum mortgage amounts—individual mortgage.
227.540 Mortgagor minimum investment.
227.545 Maximum term.
227.550 Amortization period.
227.555 Release from Multifamily Sales Project mortgage.

WAIVERS

227.748 Waivers.

Subpart D—Contract Rights and Obligations—Individual Mortgages

227.751 Cross-reference—Individual Mortgages.

Subpart E—Servicing Responsibilities—Individual Mortgages

227.800 Cross-reference—Individual Mortgages.

AUTHORITY: Secs. 211, 807, 810, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24611, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Projects

§ 227.1 Cross-reference.

(a) *General.* All of the provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility qualifications and requirements of mortgages under this subpart.

(b) *Multifamily, sales or rental projects.* (1) All of the provisions of Subpart A, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to Multifamily, Sales or Rental Project mortgages insured under this subpart except the following provisions:

Sec.
207.4 Maximum mortgage amounts
207.10 Covenant for fire insurance
207.11 Soundness of project

Sec.
207.14 Prepayment privilege; prepayment and late charges.
207.17 Classification.
207.22 Qualification of lenders.
207.23 Eligibility of property.
207.25 Certificate of cost requirements.
207.26 Form of contract.
207.27 Certificates of actual cost.
207.28 Adjustment resulting from cost certification.
207.29 Rehabilitation projects.
207.30 Requisites of agreement and certification.
207.31 Eligibility of miscellaneous type mortgages.
207.31a Eligibility of housing in declining urban areas.
207.32 Eligibility of refinanced mortgages.
207.32a Eligibility of mortgages on existing projects.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.
207.34 Reinsurance of Commissioner-held mortgages.

(2) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be construed to refer to section 810 of such Act.

[36 FR 24611, Dec. 22, 1971, as amended at 40 FR 10177, Mar. 5, 1975]

§ 227.5 Definitions of terms as used in this subpart.

As used in this subpart, the following terms will have the meaning indicated:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) [Reserved]

(d) "Mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than 99 years which is renewable; or (2) under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or (3) under a lease executed by a governmental agency for the maximum term consistent with its legal authority, provided such lease has a period of not less than 50 years to run from the date the mortgage is executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(e) "Insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner.

(f) "Mortgagor" means any individual or private entity approved by the Commissioner, which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation.

(g) "Mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee herein named.

(h) "Multifamily Sales Project" means a project constructed under a blanket mortgage, covering a group of not less than eight single-family dwellings constructed for eventual sale to individual purchasers.

(i) "Multifamily Rental Project" means a project constructed for the purpose of providing rental housing accommodations for eligible tenants.

(j) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

§ 227.10 Preference in sale or rental.

Priority in the sale or rental of dwellings covered by amortgage insured under this subpart shall be given to the following classes of persons:

(a) Military personnel;

(b) Essential civilian employees of the Armed Services;

(c) Employees of contractors for the Armed Services.

(d) Essential personnel employed or assigned to duty at a research or devel-

opment installation of the National Aeronautics and Space Administration or the U.S. Nuclear Regulatory Commission or employees of a contractor of such Administration or Commission who are employed at a research or development installation.

§ 227.15 Insurance risk and economic soundness.

Any mortgage may be accepted for insurance by the Commissioner without regard to any requirement that the property or project be economically sound.

§ 227.20 Reduced mortgage amount—leaseholds.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple. The mortgage amount shall be adjusted to the next lowest mortgage amount as stipulated in § 227.751 for individual mortgages.

[41 FR 11287, Mar. 18, 1976]

§ 227.25 Eligible mortgages—form.

(a) *Form.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(b) *Disbursement of mortgage proceeds.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

§ 227.27 Prepayment privilege; prepayment and late charge.

All of the provisions of § 207.14 of this chapter relating to prepayment and late charge shall apply to mortgages insured under this part, except that no prepayment charge shall be made for prepayments which result from releases of individual properties from a blanket mortgage covering a Multifamily Sales Project.

§ 227.30 Eligible mortgagors.

In order to be eligible for mortgage insurance under this subpart, the mortgage shall be executed by a mortgagor approved by the Commissioner.

§ 227.35 Maximum mortgage amounts—Multifamily Rental Project.

A mortgage on a Multifamily Rental Project may involve a principal obligation not in excess of the lesser of the following:

(a) 90 percent of the standard value;

(b) For such part of the property or project attributable to dwelling use, an amount per family unit, depending on the number of bedrooms, which may be:

(1) $9,000 without a bedroom.

(2) $12,500 with one bedroom.

(3) $15,000 with two bedrooms.

(4) $18,500 with three or more bedrooms.

[36 FR 24611, Dec. 22, 1971, as amended at 39 FR 32436, Sept. 6, 1974]

§ 227.40 Maximum mortgage amounts—Multifamily Sales Projects.

A mortgage on a Multifamily Sales Project may involve a principal obligation not in excess of a sum computed on the basis of a separate mortgage for each single-family dwelling comprising the project, equal to the total of each of the maximum principal obligations of such mortgages which would meet the requirements of section 203(b)(2) of the Act if the mortgagor were the owner and occupant who had made any required payment on account of the property described in such section of the Act; provided that special escrow arrangements, satisfactory to the Commissioner, are made by the mortgagor with respect to mortgage proceeds in excess of 90 percent of the estimated value.

[39 FR 32436, Sept. 6, 1974]

§ 227.45 Increased mortgage amounts—high cost areas.

(a) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may in-

crease, by not to exceed 45 percent the dollar amount limitations set forth in § 227.35(b).

(b) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed, in any event, the maximum including high cost area increases, if any, otherwise applicable by more than one-half thereof.

[36 FR 24611, Dec. 22, 1971, as amended at 39 FR 32436, Sept. 6, 1974]

§ 227.47 Loans to cover 2-year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such rate exceed the rate in effect under § 207.7 of this chapter on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 227.50 Mortgage release provisions.

A mortgage executed by a mortgagor of a Multifamily Sales Project shall provide that at any time after five years from the date the project became available for initial occupancy or at such earlier date as the Commissioner may authorize, the property underlying such mortgage may be released, in whole or in part, upon payment of the unpaid balance of the blanket mortgage allocable to the property released. Where the mortgage does not contain release provisions, no property shall, except with the consent of the Commissioner, be released from the lien thereof so long as the mortgage insurance is in force.

§ 227.55 Cost certification.

All of the provisions of §§ 207.25 through 207.30 of this chapter shall be applicable to a Multifamily Rental Project, but such provisions shall not be applicable to a Multifamily Sales Project.

Subpart B—Contract Rights and Obligations—Projects

§ 227.251 Cross-reference—Multifamily, Sales or Rental Project.

(a) All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to Multifamily, Sales, or Rental Project mortgages insured under section 810 of the National Housing Act.

(b) For the purposes of this part, all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 810 of the Act.

[36 FR 24611, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972]

Subpart C—Eligibility Requirements—Individual Mortgages

§ 227.501 Cross-reference.

(a) *General.* All of the provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility qualifications and requirements of mortgages under this subpart.

(b) *Individual Mortgages.* (1) All of the provisions of Subpart A, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to Individual Mortgages insured under this subpart except the following provisions:

Sec.
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.29 Eligible mortgages in Alaska, Guam or Hawaii.
203.40 Location of property.
203.42 Rental properties.
203.43 Eligibility of miscellaneous type mortgages.
203.43a Eligibility of housing in declining urban areas.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.50 Eligibility of rehabilitation loans.
203.51 Negotiated interest rate.

(2) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 810 of such Act.

[36 FR 24611, Dec. 22, 1971, as amended at 45 FR 76389, Nov. 18, 1980; 47 FR 16779, Apr. 20, 1982; 51 FR 21875, June 16, 1986; 52 FR 8070, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 227.505 Definitions of terms as used in this subpart.

As used in this subpart, the following terms will have the meaning indicated:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) [Reserved]

(d) "Mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than 99 years which is renewable; or (2) under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or (3) under a lease executed by a governmental agency for the maximum term consistent with its legal authority, provided such lease has a period of not less than 50 years to run from the date the mortgage is executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(e) "Insured mortgage" means a mortgage which has been insured by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument by the Commissioner.

(f) "Mortgagor" in the case of an Individual Mortgage means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "Mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee herein named.

(h) "Individual Mortgage" means a mortgage covering an individual single-family dwelling which has been released from a Multifamily Sales Project mortgage.

(i) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

§ 227.510 Preference in sale or rental.

Priority in the sale or rental of dwellings covered by a mortgage insured under this subpart shall be given to the following classes of persons:

(a) Military personnel;

(b) Essential civilian employees of the Armed Services;

(c) Employees of contractors for the Armed Services;

(d) Essential personnel employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration or the U.S. Nuclear Regulatory Commission or employees of a contractor of such Administration or Commission who are employed at a research or development installation.

§ 227.515 Insurance risk and economic soundness.

Any mortgage may be accepted for insurance under this subpart by the Commissioner without regard to any requirement that the property or project be economically sound or an acceptable risk.

§ 227.520 Reduced mortgage amounts—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based in the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent. The mortgage amount shall be adjusted to the next lowest mortgage amount as stipulated in § 227.535 for individual mortgages.

§ 227.525 Eligible mortgages—form.

(a) *Form.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(b) *Disbursement of mortgage proceeds.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

§ 227.530 Eligible mortgagors.

In order to be eligible for mortgage insurance under this subpart, the mortgage shall be executed by a mortgagor approved by the Commissioner.

§ 227.535 Maximum mortgage amounts—individual mortgage.

The mortgage shall involve a principal obligation in multiples of $50 and must not exceed the unpaid balance of the project mortgage allocable to the property as security.

[45 FR 29278, May 2, 1980, and 48 FR 12085, Mar. 23, 1983]

§ 227.540 Mortgagor minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine, in cash or its equivalent.

§ 227.545 Maximum term.

The mortgage shall come due on the first of a month and must have a maturity satisfactory to the Commissioner not more than 35 years or the unexpired term of the Multifamily Sales Project mortgage at the time of release of the mortgaged property from such property mortgage.

§ 227.550 Amortization period.

The mortgage shall contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

[45 FR 29278, May 2, 1980, and 48 FR 12085, Mar. 23, 1983]

§ 227.555 Release from Multifamily Sales Project mortgage.

To be released from the lien of a project mortgage the property to be released and mortgaged shall be included as part of a Multifamily Sales Project and shall have located thereon a single-family dwelling. The mortgage shall be executed in connection with the release of such property from the lien of the project mortgage and to replace or refinance the project mortgage as to such property.

WAIVERS

§ 227.748 Waivers.

The Secretary in any individual case may waive any requirement of this

subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

Subpart D—Contract Rights and Obligations—Individual Mortgages

§ 227.751 Cross-reference—Individual Mortgages.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to Individual Mortgages insured under section 810 of the National Housing Act except the following provisions:

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund Income or Loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.
203.440 et seq. Insured home improvement loans.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 810 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24611, Dec. 22, 1971, as amended at 51 FR 21875, June 16, 1986; 52 FR 8070, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

Subpart E—Servicing Responsibilities—Individual Mortgages

§ 227.800 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act shall apply to individual mortgages insured under section 810 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48204, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 228—INDIVIDUAL RESIDENCES; NATIONAL DEFENSE HOUSING MORTGAGE INSURANCE [SEC. 903]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.
228.251 Cross-reference.
228.255 Due date of initial MIP.
228.260 Adjustment of initial MIP.
228.265 Amount of MIP.
228.270 Pro rata adjustment of MIP upon prepayment.
228.275 Payment of delinquent interest.
228.280 Special forbearance relief—ownership of ten unit project.
228.285 Effect of special forbearance agreement on default and MIP.
228.290 Insurance benefits—conveyed and non-conveyed properties—foreclosure costs.
228.295 Debenture interest rate.
228.300 Maturity of debentures.
228.305 Applicability to outstanding mortgages and commitments.

Subpart C—Servicing Responsibilities

228.400 Cross-reference.

AUTHORITY: Secs. 903, 907, National Housing Act (12 U.S.C. 1750b, 1750f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24614, Dec. 22, 1971, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 228.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes in connection with national defense housing insurance under section 903 of the National Housing Act, except the following:

Sec.

203.259a Scope.
203.260 Amount of Mortgage Insurance Premium (MIP).
203.262 Due date of (MIP).
203.263 Adjustment of initial MIP.
203.268 Pro rata payment of MIP.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.402 Items included in payment—conveyed properties.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 903 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24614, Dec. 22, 1971, as amended at 47 FR 30754, July 15, 1982; 48 FR 28807, June 23, 1983]

§ 228.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 228.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second premium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 228.265 Amount of MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid as provided in §§ 203.264 and 203.265 of this chapter. The MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

[47 FR 30754, July 15, 1982]

§ 228.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 228.275 Payment of delinquent interest.

The mortgagee may, with the written consent of the Commissioner, apply partial payments to delinquent interest to the exclusion of prior delinquent principal payments at a rate not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled. Where the partial payments are so applied, the date of default shall be 30 days after the due date of the earliest monthly payment any part of which remains unpaid.

§ 228.280 Special forbearance relief—ownership of ten unit project.

The Commissioners may consent to the mortgagee entering into a written agreement with the mortgagor providing for a postponement for a period not to exceed 1 year of that part of the monthly payment which represents amortization of principal where the mortgagor is the owner of a group of properties consisting of a project of not less than 10 rental units. Such agreement shall obligate the mortgagor to deposit with the mortgagee the entire net income from all of the properties comprising the project, under arrangements satisfactory to the Commissioner. The agreement shall also obligate the mortgagor to resume monthly payments after the effective period of the agreement in such amounts as will completely amortize the mortgage indebtedness within the original maturity. The agreement shall in no way affect the amount of the annual MIP which shall continue to be calculated in accordance with the original amortization provisions.

§ 228.285 Effect of special forbearance agreement on default and MIP.

If the mortgagee withholds foreclosure proceedings against the mortgagor pursuant to the provisions of a forbearance agreement approved by the Commissioner, partial payments on the mortgage received by the mortgagee shall be applied and reapplied in the manner prescribed in such agreement. Where payments are so applied, the date of default shall be 30 days after the due date of the earliest monthly payment, any part of which remains unpaid. In such instances, the Commissioner may not require the payment of MIP or any portion thereof to the extent that partial payments received from the mortgagor during the period of forbearance are insufficient to pay such premiums after applying the partial payments to delinquent interest. The rate of delinquent interest shall be not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled.

§ 228.290 Insurance benefits—conveyed and non-conveyed properties—foreclosure costs.

All the provisions of § 203.402 of this chapter shall govern the computation of the items included in insurance benefits for conveyed and non-conveyed properties, except that in lieu of the allowance for foreclosure costs or for the costs of otherwise acquiring the property provided for in paragraph (f) of § 203.402 for conveyed properties or in paragraphs (f) and (n) of § 203.402 for non-conveyed properties, there shall be included on account of such costs, in those cases involving mortgages on which the unpaid principal obligation at the time of the institution of foreclosure exceeds 80 percent of the appraised value of the property as the date the mortgage was accepted for insurance, an amount not in excess of the greater of the following:

(a) Two percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings, but not in excess of $75; or

(b) Two-thirds of the foreclosure costs or the costs of acquiring the property otherwise.

[36 FR 24614, Dec. 22, 1971, as amended at 52 FR 1330, Jan. 13, 1987]

§ 228.295 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953 and pursuant to a commitments issued prior

to May 29, 1954, and at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance after May 29, 1954, and pursuant to commitments issued prior to August 9, 1954, and at the rate in effect as of the date the commitment was issued or as of the date the mortgage was endorsed for insurance in the case of mortgages committed or endorsed for insurance on or after August 9, 1954. The following additional interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
2¼	Aug. 9, 1954	Jan. 1, 1955.
2½	Jan. 1, 1955	July 1, 1955.
2⅞	July 1, 1955	July 1, 1956.
3	July 1, 1956	Jan. 1, 1957.
3¼	Jan. 1, 1957	July 1, 1957.
3½	July 1, 1957	

§ 228.300 Maturity of debentures.

Debentures shall mature as follows:

(a) Where the mortgage was insured pursuant to a commitment issued prior to August 9, 1954, and debentures shall mature 10 years after the date of issue of such debentures.

(b) Where the mortgage was insured pursuant to a commitment issued on or after August 9, 1954, the debentures shall mature 20 years after the date of issue of such debentures.

§ 228.305 Applicability to outstanding mortgages and commitments.

The regulations in this part are effective as to all mortgages on which a commitment to insure is issued to an approved mortgagee on or after August 11, 1954.

Subpart C—Servicing Responsibilities

§ 228.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes in connection with national defense housing insurance under section 903 of the National Housing Act.

[42 FR 29305, June 8, 1977]

PART 229—NATIONAL DEFENSE RENTAL HOUSING MORTGAGE INSURANCE [SEC. 908]

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

Sec.
229.251 Cross-reference.
229.252 Effective date.

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

§ 229.251 Cross-reference.

All of the provisions of Subpart B, Part 207 of this chapter concerning rights and obligations of a mortgagee pursuant to an insurance contract under section 207 of the Act apply to mortgages insured pursuant to section 908 of the Act except for the purposes of this part:

(a) References in Part 207 of this chapter to section 207 of the act shall be deemed to mean section 908 of the act.

(b) Debentures shall mature as follows:

(1) Where the mortgage was insured pursuant to a commitment issued prior to August 13, 1954, the debentures shall mature 10 years after the date of issue of such debentures.

(2) Where the mortgage was insured pursuant to a commitment issued on or after August 13, 1964, the debentures shall mature 20 years after the date of issue of such debentures.

(Interpret or apply sec. 908, 65 Stat. 301, as amended; 12 U.S.C. 1750(g))

[36 FR 24615, Dec. 22, 1971]

§ 229.252 Effective date.

The provisions of this part shall be effective as to all mortgages with respect to which a commitment to insure shall be issued on or after the date hereof.

(Sec. 907, 65 Stat. 301; 12 U.S.C. 1750f)

[36 FR 24615, Dec. 22, 1971]

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

Subpart A—Eligibility Requirements

Sec.
231.1 Cross-reference.
231.2 Definitions.
231.3 Maximum mortgage amounts—new construction.
231.4 Maximum mortgage amounts—rehabilitation projects.
231.5 Increased mortgage amounts—elevator type structures.
231.6 Increased mortgage amounts—high cost areas.
231.7 Loans to cover two year operating loss.
231.8 Supervision of mortgagors.
231.9 Eligible occupants.
231.10 Development of property.
231.10a Certificate of cost requirements.
231.10b Form of contract.
231.10c Disposition of general contractor's holdback.
231.11 Certificates of actual cost.
231.11a Builder's and sponsor's profit and risk allowance.
231.11b Contractor's certification.
231.12 Private mortgagor—nonprofit; prepayment privilege and prepayment charges.
231.13 Private mortgagor—profit prepayment privileges and prepayment charges.
231.14 Late charge.

Subpart B—Contract Rights and Obligations

231.251 Cross-reference.

AUTHORITY: Secs. 211, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C 3535(d).

SOURCE: 36 FR 24615, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 231.1 Cross-reference.

(a) All of the provisions of Subpart A, Part 207 of this chapter concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act apply to mortgages on projects for the elderly insured under section 231 of the National Housing Act except the following provisions:

Sec.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.14 Prepayment privilege; prepayment and late charges.
207.17 Classification.
207.19 Required supervision of private Mortgagors.
207.20 Occupancy requirements.
207.24 Development of property.
207.25 Certificate of cost requirements.
207.26 Form of contract.
207.27 Certificates of actual cost.
207.31b Eligibility of mortgages covering housing near military installations.
207.32a Eligibility of mortgages on existing projects.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 231 of the Act.

[36 FR 24615, Dec. 22, 1971, as amended at 40 FR 10177, Mar. 5, 1975; 42 FR 59675, Nov. 18, 1977]

§ 231.2 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) [Reserved]

(b) "Act" means the National Housing Act, as amended.

(c) "Elderly person" means any person married or single, 62 years of age or more.

(d) "Housing for the elderly" means eight or more new or rehabilitated living units which are specially designed for the use and occupancy of elderly persons.

(e) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(f) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(g) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with the periodic payments provided for in the mortgage.

(h) "Replacement cost" means the Commissioner's estimate of the construction cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(i) "Private Mortgagor—Profit" means any mortgagor approved by the Commissioner, which, until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, may in the Commissioner's discretion be regulated or restricted as to rents or sales, charges, capital structure, rate of return and methods of operation.

(j) "Private Mortgagor—Nonprofit" means a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is in no manner controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under Federal or State laws or by political subdivisions of States or agencies thereof, or the Federal Housing Commissioner, as to rents, charges, and methods of operation. The regulation or supervision of the mortgagor shall be in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(k) "Public Mortgagor" means a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or nonprofit development or housing corporation restricted by Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation.

(l) "Handicapped person" means a person who has a physical impairment which:

(1) Is expected to be of a long-continued and indefinite duration;

(2) Substantially impedes his ability to live independently; and

(3) Is of such nature that his ability to live independently could be improved by more suitable housing conditions.

§ 231.3 Maximum mortgage amounts—new construction.

The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(a) *Family unit limitations.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(1) $23,985 without a bedroom.

(2) $26,813 with one bedroom.

(3) $32,019 with two bedrooms.

(4) $38,532 with three bedrooms.

(5) $45,300 with four or more bedrooms.

(b) *Replacement cost limitation.* (1) The Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed if executed by a Private Mortgagor—Nonprofit or a Public Mortgagor. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(2) 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed if executed by a Private Mortgagor—Profit. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builders and sponsors profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner, after certify-

ing such allowance is unreasonable, prescribes a lesser percentage.

(c) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

[36 FR 24615, Dec. 22, 1971, as amended at 41 FR 11287, Mar. 18, 1976; 41 FR 41881, Sept. 23, 1976; 53 FR 8884, Mar. 18, 1988]

§ 231.4 Maximum mortgage amounts—rehabilitation projects.

(a) *Principal obligation of mortgage.* In the case of properties other than new construction, the principal obligation of the mortgage shall not exceed:

(1) *Public Mortgagor and Private Mortgagor—Nonprofit.* For a Public Mortgagor and a Private Mortgagor—Nonprofit, the Commissioner's estimate of the value of the project after the completion of the rehabilitation;

(2) *Private Mortgagor—Profit.* For a Private Mortgagor—Profit, 90 percent of the Commissioner's estimate of the value of the project after the completion of the rehabilitation.

(b) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation;

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) *Nonprofit mortgagor.* If the mortgagor is a nonprofit mortgagor, the Commissioner's estimate of the cost of the repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(ii) *Profit mortgagor.* If the mortgagor is a profit mortgagor, the Commissioner's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90% of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) *Nonprofit mortgagor.* If the mortgagor is a nonprofit mortgagor, the Commissioner's estimate of the cost of the proposed repair or rehabilitation plus the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(ii) *Profit mortgagor.* If the mortgagor is a profit mortgagor:

(*a*) 90% of the Commissioner's estimate of the cost of the repair or rehabilitation, plus

(*b*) 90% of the actual purchase price of the land and improvements, or Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation, whichever is the lesser as provided in this (*b*).

(c) *Reduced mortgage amount—leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 231.5 Increased mortgage amounts—elevator type structures.

In order to compensate for the higher costs incident to construction

of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit, as provided in § 231.3(a), to not to exceed:

(a) $27,251 without a bedroom.

(b) $31,239 with one bedroom.

(c) $37,986 with two bedrooms.

(d) $49,140 with three bedrooms.

(e) $53,942 with four or more bedrooms.

[53 FR 8884, Mar. 18, 1988]

§ 231.6 Increased mortgage amounts—high cost areas.

(a) The Commissioner may increase the dollar amount limitations in §§ 231.3(a) and 231.5—

(1) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(2) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(b) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

[36 FR 24615, Dec. 22, 1971, as amended at 48 FR 16669, Apr. 19, 1983; 53 FR 8855, Mar. 18, 1988]

§ 231.7 Loans to cover two year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 231.2 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 231.8 Supervision of mortgagors.

(a) *Private Mortgagor—Profit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed by a Private Mortgagor—Profit.

(b) *Private Mortgagor—Nonprofit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed by a Private Mortgagor—nonprofit except that:

(1) A private mortgagor—nonprofit shall not be subject to the provisions of § 207.19(b) of this chapter (rate of return); § 207.19(c)(1) of this chapter (the requirement of a deposit, in cases involving the insurance of advances, to meet the cost of equipping and renting the project subsequent to construction and to provide for accruals to meet payment of taxes, ground rents, mortgage insurance premiums, property insurance premiums and assessments);

§ 207.19(e) of this chapter (rents and charges); § 207.19(g) of this chapter (mortgagor's equity investment); and § 207.19(h) of this chapter (advance amortization).

(2) In connection with a Private Mortgagor—Nonprofit the provisions of § 207.19(d) of this chapter (Labor standards and prevailing wage requirements), may be waived in those cases where laborers or mechanics not otherwise employed at any time on the project voluntarily donate their services without full compensation for the purpose of lowering construction costs and the Commissioner determines that amounts thus saved are fully credited to the Private Mortgagor—Nonprofit. No charge shall be made by a Private Mortgagor—Nonprofit for accommodations, facilities or services offered by the project except those charges approved by the Commissioner.

§ 231.9 Eligible occupants.

The mortgagor shall establish that preference or priority of opportunity to rent the dwelling units covered by the mortgage will be given to elderly persons and to handicapped persons.

§ 231.10 Development of property.

(a) *Commercial and special facilities.* The project may include such commercial and special facilities as the Commissioner deems adequate to serve the occupants of the project.

(b) *Zoning, deed or building restrictions.* The project when constructed or rehabilitated shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental requirements.

§ 231.10a Certificate of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder including any collateral agreement, and with subcontractors and suppliers. It shall also agree:

(1) To enter into a construction contract in a form meeting the requirements of § 231.10b.

(2) To execute a certificate of actual cost upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over:

(i) In the case of a private mortgagor—profit, 90 percent of actual cost.

(ii) In the case of a public mortgagor and private mortgagor—nonprofit. 100 percent of actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement of a construction contract shall not apply where the mortgagor is the general contractor.

§ 231.10b Form of contract.

(a) *In general.* The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by the Commissioner.

(b) *Lump sum contract.* A lump sum contract may be used where it is established to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor, and where the mortgage is executed by a private mortgagor—profit or a public mortgagor.

(c) *Cost plus contract.* A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(2) Where the mortgage is executed by a private mortgagor—nonprofit, unless it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

§ 231.10c Disposition of general contractor's holdback.

In those cases in which a conditional commitment has been issued after March 4, 1977, and there is no identity of interest between the mortgagor and general contractor, the following provisions shall be applicable:

(a) The construction contract, whether it be lump sum or cost-plus, shall contain provisions whereby the mortgagor and contractor agree that the general contractor:

(1) Shall submit to the mortgagor, on a monthly basis, a requisition for payment equal to the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior payments made to the general contractor;

(2) Shall accept, for each and every requisition, 90 percent of the amount approved for payment, and shall agree that the remaining 10 percent shall be retained by the mortgagee to be deposited in an escrow account when the construction of the project has been substantially completed, with the exception of minor incomplete onsite construction items, and the following requirements have been met:

(i) All work under the construction contract, requiring inspection by municipal or other governmental authorities having jurisdiction, has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(ii) All required certificates of occupancy or other approvals, with respect to all units of the project, have been issued by State or local governmental authorities having jurisdiction, except that, in the event the mortgagor fails or refuses to file requests for issuance of such certificates, this requirement will be satisfied upon the Commissioner's finding that such certificates or approvals would be forthcoming but for the mortgagor's failure to request their issuance;

(iii) Permissions to occupy for all units of the project have been issued by the Commissioner; and

(iv) In the event a cost-plus form of contract has been used, that the mortgagee has been notified by the HUD field office that the mortgagor has filed the "Contractor's Certificate of Actual Cost" with the Commissioner, except that, if the mortgagor fails or refuses to file such a certificate within a reasonable time, the general contractor's direct submission of the certificate of actual cost may be the basis for the HUD field office notification and the establishment of the escrow.

(3) Shall be entitled to the funds in the escrow account upon compliance with the terms of the Escrow Agreement which shall contain the conditions for release of the escrow account to the general contractor.

(b) The building loan agreement shall provide that:

(1) The mortgagor shall request monthly from the mortgagee an advance of mortgage proceeds for construction items in the amount of the total value of classes of work acceptably completed plus the value of materials and equipment not incorporated in the work but delivered to, and suitably stored at, the site, less prior advances;

(2) The mortgagor shall accept, for each and every advance, 90 percent of the amount of advance approved;

(3) The mortgagee shall retain the remaining 10 percent of each approved advance;

(4) The mortgagee shall transfer the 10 percent holdback for each advance, minus an amount that is one and one-half times the cost estimated by the Commissioner that is required for the completion of any minor incomplete on-site construction items, to an escrow account when the general contractor completes the construction as determined by the Commissioner and meets the requirements set forth in paragraphs (a)(2) (i), (ii) and (iii); and (a)(2) (i), (ii), (iii) and (iv) of this section for a general contractor who has executed a lump sum form of contract

or cost-plus form of contract, respectively.

(5) The 10 percent holdback shall not be construed as an advance from mortgage proceeds by the mortgagee until the mortgagee places the funds in an escrow account in accordance with paragraph (b)(4) of this section; and

(6) The mortgagee and mortgagor agree that, notwithstanding the inclusion in the building loan agreement of the provisions contained in paragraphs (b) (1) through (5) of this section, the mortgagee is not required to make any advance of mortgage proceeds if the mortgagor is in default under the building loan agreement, other than the advance of the 10 percent holdback in accordance with paragraph (b)(4) of this section, and, except as altered by the provisions of this paragraph, the rights and obligations of the mortgagee and mortgagor under the building loan agreement shall not be affected.

(c) An Escrow Agreement shall be established for the purposes set forth in paragraphs (a) and (b) of this section and the depository under such agreement shall be either the mortgagee or a party designated by the mortgagee. The agreement shall contain provisions for the release of the escrow fund which shall include the requirement that the general contractor submit its certificate of actual cost for approval by the Commissioner and that the certificate be approved by the Commissioner before the Contractor shall be entitled to the fund. If the mortgagor and general contractor have entered into a lump sum contract, the requirement for the certificate of actual cost shall not be applicable. The Escrow Agreement shall provide that the depository will:

(1) Release the funds upon request of the general contractor and approval of the Commissioner;

(2) Invest the funds in an interest bearing account, if the mortgagor and general contractor have so agreed, which interests shall be paid to the general contractor when the escrowed funds are released to the general contractor;

(3) Release to the general contractor only that portion of the escrowed funds which do not exceed the amount of costs approved by the Commissioner on the "Contractor's Certificate of Actual Cost", or, in the case of a general contractor which has entered into a lump sum contract, an amount, which when added to payments already received, does not exceed the amount of the lump sum contract. In the event the contractor has not completed construction of the project within the time provided in the construction contract, there shall be deducted from the escrow fund an amount which the Commissioner determines equals the liquidated damages as provided in the construction contract.

(4) Disburse any remaining amount in the escrow fund in accordance with the terms of the escrow agreements; and

(d) The mortgagee's request for approval by the Commissioner of an advance for construction items shall contain a provision that such approval by the Commissioner shall constitute approval for mortgage insurance of the 10 percent holdback retained by the mortgagee when the retained funds are placed in an escrow account in accordance with this section. The mortgage insurance on the funds retained by the mortgagee shall be effective on the date the funds are transferred to the escrow account.

(e) For the purposes of this section, "substantial completion" shall mean that the Commissioner has issued a final inspection report and that the Commissioner has determined that the contractor has completed the project in accordance with the terms of the construction contract.

[42 FR 766, Jan. 4, 1977; 42 FR 2954, Jan. 14, 1977]

§ 231.11 Certificates of actual cost.

(a) *Mortgagor's certificate*—(1) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted prior to final endorsement and upon completion of the improvements to the satisfaction of the Commissioner.

(2) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(i) The cost plus construction contract, including the builder's fee actually paid and approved by the Commissioner; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(ii) The architect's fee.

(iii) The offsite public utilities and streets not included in paragraph (a)(2)(i) of this section.

(iv) The organizational and legal expenses.

(v) The other items of expense approved by the Commissioner.

(3) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders or partners. Any such payments shall be deducted from the costs determined under paragraph (a)(2) of this section.

(b) *Records.* The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(c) *Certificate of public accountant.* The certificate of actual cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 231.11a Builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit mortgagor) an allowance for builder's and sponsor's profit and risk, the amount of which shall be dependent upon a determination by the Commissioner as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 231.11(a)(2)(i). This allowance shall be 10 percent of the actual cost computed in accordance with § 231.11(a) excluding the following items:

(1) Any builder's fee actually paid and approved by the Commissioner. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(c) *Nonidentity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost computed in accordance with § 231.11(a) excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(d) *Nonapplicability to nonprofit mortgagor.* The provisions of paragraphs (a) through (c) of this section shall not be applicable to a project involving a nonprofit mortgagor.

§ 231.11b Contractor's certification.

(a) *Certification by general contractor.* Where a cost plus form of contract is used by a cooperative mortgagor or where any other type of mortgagor is required by the Commissioner to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the gener-

al contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) *Certification by subcontractor.* Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 231.12 Private mortgagor—nonprofit; prepayment privilege and prepayment charges.

In the case of a private mortgagor—nonprofit:

(a) *Prepayment in full.* Except as otherwise provided in paragraph (d) of this section, the mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained and upon such terms and conditions as the Commissioner may prescribe.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to maturity, and with the approval of the Commissioner, partial prepayments may be made, after thirty days' written notice to the mortgagee, on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the note, a reasonable charge on such excess may be allowed as agreed upon between the mortgagor and the mortgagee, except that no charge may be made where the prepayment is made by a guarantor pursuant to a guaranty agreement.

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24615, Dec. 22, 1971, as amended at 51 FR 2359, Jan. 16, 1986]

§ 231.13 Private mortgagor—profit prepayment privileges and prepayment charges.

In the case of a private mortgagor—profit:

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one

calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24615, Dec. 22, 1971, as amended at 51 FR 2360, Jan. 16, 1986]

§ 231.14 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

Subpart B—Contract Rights and Obligations

§ 231.251 Cross-reference.

(a) All of the provisions of Part 207, Subpart B of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages insured under section 231 of such Act.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 231 of the Act.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

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AUTHORITY: Secs. 211, 232 and 244, National Housing Act (12 U.S.C. 1715b, 1715w, and 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24618, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

DEFINITIONS

§ 232.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated.

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Act" means the National Housing Act, as amended.

(c) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named. The mortgagee shall meet the eligibility qualifications and requirements of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter.

(d) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(e) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(f) "Insured mortgage" means a mortgage insured by the endorsement of the credit instrument by the Commissioner.

(g) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(h) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(i) "Nursing Home" means a public facility, proprietary facility or a facility of a private nonprofit corporation or association, licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services. The term also includes additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day. In all such facilities, the nursing care and medical services must be prescribed by, or performed under general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(j) "Project" means a nursing home or intermediate care facility or combined nursing home and intermediate

care facility, approved by the Commissioner under provisions of this subpart. A project may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day. "Project" also means a board and care home or a board and care home in combination with a nursing home or an intermediate care facility, or both.

(k) "Intermediate care facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons, who, because of incapacitating infirmities, require minimum but continous care but are not in need of continous medical or nursing services. The term also includes additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(l) "Board and care home" means a proprietary residential facility or a residential facility owned by a private nonprofit corporation or association, providing room, board and continuous protective oversight that is regulated by a State in accordance with section 1616(e) of the Social Security Act, so long as the home is located in a State that, at the time an application is made for insurance under this part, has demonstrated to the Secretary that it is in compliance with the provisions of section 1616(e). Continuous protective oversight involves a range of activities or services which might include, for relatively independent occupants, such things as awareness on the part of management staff of an occupant's condition and whereabouts (and the ability to intervene in the event of crisis) or, for relatively dependent occupants, such services as supervision of nutrition or medication, assistance as necessary with activities of daily living, such as bathing, dressing, shopping, or eating, or a 24-hour responsibility for the welfare of the resident. Continuous protective oversight is not limited to the above activities, nor must it include the examples given.

[36 FR 24618, Dec. 22, 1971, as amended at 45 FR 36396, May 30, 1980; 49 FR 12698, Mar. 30, 1984; 50 FR 37522, Sept. 16, 1985; 53 FR 15672, May 3, 1988]

Application and Certification

§ 232.5 Application.

An application for the issuance of a site appraisal and market analysis (SAMA) letter must be submitted by the project sponsor. An application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsor of such project. Such application shall be submitted to the local HUD field office on FHA-approved forms. No application shall be considered unless accompanied by the exhibits required by the form. An applicant may initially elect to submit an application for a SAMA letter, a conditional commitment or a firm commitment depending upon the completeness of the drawings, specifications and other required exhibits.

[39 FR 12004, Apr. 2, 1974, as amended at 40 FR 22829, May 27, 1975]

§ 232.6 Required certificates.

(a)(1) Except as provided in paragraph (a)(2) of this section, every application for insurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which project is or will be located, designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(i) There is need for the project.

(ii) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care

facility or combined home and facility as required by paragraph (a)(1)(i), the Secretary shall not insure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that—

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds, demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility;

(iii) Is addressed to and acceptable to the Secretary in form and substance; and

(iv) In the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for insurance and is approved by the Secretary.

The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

(b) In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, housing less than 50 individuals, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the certification of need requirement of paragraph (a)(1)(i) of this section, provide the Secretary with written support identifying the need for the facility or home.

(c) Every application for insurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1616(e) of the Social Security Act.

(d) No mortgage shall be insured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

[53 FR 15672, May 3, 1988, as amended at 53 FR 33735, Aug. 31, 1988; 53 FR 40221, Oct. 14, 1988]

Fees and Charges

§ 232.10 Application-commitment fees.

(a) *Application fee—SAMA letter.* An application fee of $1.00 per thousand dollars of the requested mortgage amount shall accompany the application for a SAMA letter.

(b) *Application fee—conditional commitment.* An application-commitment fee of $1.00 per thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the application fee for an unexpired SAMA letter has been collected. A fee of $2 per one thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the SAMA application fee has been paid but the SAMA letter has expired or in cases in which a SAMA application fee has not been paid.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to prior fees received in connection with applications for a SAMA letter or a conditional commitment, will aggregate $3 per thousand dollars of the requested mortgage amount to be insured.

(d) The payment of an application-commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or contracted, pursuant to the Atomic Energy Community Act of 1955, as provided in § 207.31(b)(4) of this chapter.

[39 FR 12004, Apr. 2, 1974]

§ 232.11 Rejection of an application.

A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or conditional commitment, shall be grounds for rejection of an application for conditional or firm commitment, respectively. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

[39 FR 12004, Apr. 2, 1974]

§ 232.12 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(a) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(b) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

§ 232.13 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

(c) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 232.13a Transfer fee.

Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

§ 232.14 Refund of fees.

If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determined. A transfer fee may be refunded only in such instances as the Commissioner may determine.

§ 232.15 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 232.17 Fees not required.

The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[41 FR 14861, Apr. 8, 1976]

ELIGIBLE MORTGAGORS

§ 232.20 Eligible mortgagors.

All mortgagors shall be approved by the Commissioner and shall possess the legal powers necessary and incidental to operating the project, unless a mortgagor leases the property or project to a qualified operator, in which case the lessee shall be approved by the Commissioner and shall possess the legal powers necessary and incidental to operating the project.

§ 232.21 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39695, Sept. 27, 1989]

ELIGIBLE MORTGAGES

§ 232.25 Mortgage forms.

(a) *Approval of forms.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction where the project is located.

(b) *Changes in form.* No changes in the approved form shall be made without the prior written approval of the Commissioner.

§ 232.25a Eligibility of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 232.1(h). The mortgage shall be on real estate held:

(a) In fee simple; or

(b) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(c) Under a lease having a period of not less than fifty-five years to run from the date the mortgage is executed; or

(d) Under a lease executed by a governmental agency, an Indian, an

Indian tribe, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such a lease, provided that the term of any such lease shall run for a period of not less that fifty years from the date the mortgage is executed.

[36 FR 24618, Dec. 22, 1971, as amended at 44 FR 23067, Apr. 18, 1979; 50 FR 4647, Feb. 1, 1985]

§ 232.26 Mortgage lien.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is a first lien upon and covers the entire project, including the equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed, and the equipment financed with mortgage proceeds, are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project or the purchase of the equipment financed with mortgage proceeds.

§ 232.27 Maximum mortgage maturity.

The mortgage shall have a maturity not to exceed 40 years from the beginning of amortization and shall contain amortization or sinking fund provisions satisfactory to the Commissioner.

[37 FR 5021, Mar. 9, 1972]

§ 232.28 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for payments on the first day of each month on account of interest and principal in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain a sustaining level of operation.

§ 232.29 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

(c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[36 FR 24618, Dec. 22, 1971, as amended at 49 FR 19458, May 8, 1984]

§ 232.30 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of 90 percent of the Commissioner's estimate of the value of the property or project, including equipment to be used in its operation, when the proposed improvements are completed and the equipment is installed.

[39 FR 32436, Sept. 6, 1974]

§ 232.31 Increased mortgage amounts.

If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct a project without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this part, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

§ 232.31a Loans to cover two year operating loss.

(a) *Operating loss determination.* When the Commissioner determines

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that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 232.29 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 232.32 Adjusted mortgage amount—rehabilitation projects.

In addition to the limitations of § 237.30, a mortgage having a principal amount computed in compliance with the applicable provisions of this subpart, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (1) The Commissioner's estimate of the cost of the repair or rehabilitation; plus (2) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (1) The Commissioner's estimate of the cost of the repair or rehabilitation, and (2) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

§ 232.33 Reduced mortgage amount—leaseholds.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

[41 FR 11287, Mar. 18, 1976]

§ 232.34 Certificate of nondiscrimination by mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 232.35 Accumulation of next premium.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 232.36 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 232.37 Prepayment privilege and prepayment charges.

(a) *Proprietary facilities.* In the case of a mortgagor operating a proprietary facility, the following provisions shall be applicable:

(1) *Prepayment privilege.* Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after given to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(2) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and the mortgagee. The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any 1 calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(b) *Nonprofit facility.* In the case of a facility operated by a nonprofit corporation or association, the following provisions shall be applicable:

(1) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained as he may prescribe.

(2) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(3) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that prior to maturity and with the approval of the Commissioner partial prepayments

may be made after 30 days' written notice to the mortgagee on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the note, a reasonable charge on such excess may be allowed as agreed upon between the mortgagor and the mortgagee.

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24618, Dec. 22, 1971, as amended at 51 FR 2360, Jan. 16, 1986]

§ 232.38 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 232.39 Construction standards.

The project shall conform to standards satisfactory to the Commissioner.

(a) Nursing homes or intermediate care facilities shall consist of not fewer than 20 beds after completion of the construction or rehabilitation. The nursing home or intermediate care facility structure, or designated portion of a structure, must not contain board and care units.

(b) A board and care home shall be one or more free-standing structures or identifiable, separate portions of one or more free-standing structures containing not fewer than five residential one-bedroom or efficiency accommodations after completion of the construction or rehabilitation. A maximum ratio of four persons per full bathroom shall be permitted in each board and care home. Group dining facilities shall be available. Kitchen facilities are not required in each accommodation. Only one- to four-person occupancy will be permitted in each bedroom accommodation. A board and care home owner must also meet State and local occupancy requirements, including State or local requirements permitting fewer than four persons per accommodation. The board and care structure, or designated portion of the structure, shall not contain any nursing home or intermediate care beds.

[50 FR 37522, Sept. 16, 1985]

§ 232.40 Zoning, deed or building restrictions.

The project when constructed or rehabilitated shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations.

§ 232.41 Eligibility of miscellaneous type mortgages.

A mortgage covering a facility having 20 or more beds shall be eligible for insurance under this subpart if it meets the requirements of § 207.31(b) and (c) of this chapter, as well as the requirements of this subpart.

[50 FR 47726, Nov. 20, 1985]

§ 232.41a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, or construction of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages) as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for an adequate nursing home or intermediate care facility for persons of low and moderate income.

(3) That under all of the special surrounding circumstances, the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 232.42 Eligibility of refinanced mortgages.

A mortgage given to refinance an existing insured mortgage may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act if it meets the requirements of § 207.32 (a) through (c) of this chapter as well as the requirements of this subpart. Mortgages insured under this subpart need not meet the requirement, in § 207.32, that the existing insured mortgage cover five or more rental units.

[53 FR 16074, May 5, 1988]

§ 232.43 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner) and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under such contract to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

§ 232.44 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8885, Mar. 18, 1988]

Supervision of Mortgagors

§ 232.45 Supervision by Commissioner.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

SAMA Letter and Commitment

§ 232.50 Effect and term of SAMA letter, conditional and firm commitment.

(a) *Effect of SAMA letter, conditional and firm commitment*—(1) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm

commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a commitment is received before expiration of the SAMA letter:

(i) The land value fully improved (with offsite improvements installed).

(ii) The acceptability of the proposed project site, the proposed number of beds or accommodations, and the market for the number of proposed beds or accommodations. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number of beds or accommodations, the SAMA letter may establish the specific lesser number of beds or accommodations that would be acceptable and any acceptable alternative plan.

(iii) The acceptability of the monthly bed rates or accommodation charges proposed. Where monthly bed rate or accommodation charge levels are unacceptable, the SAMA letter may establish specific levels that would be acceptable.

(2) *Conditional commitment.* The issuance of a conditional commitment indicates completion of technical processing involving the estimated cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, the supportable cost, the financial and credit capacity of the sponsorship, financial requirements and the mortgage amount.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(b) *Term of SAMA letter, conditional commitment and firm commitment—*(1) *SAMA letter.* A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Conditional commitment.* A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(3) *Firm commitment*—(i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction.

(iii) The term of either a SAMA letter, or conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(c) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted.

[39 FR 12004, Apr. 2, 1974, as amended at 40 FR 22829, May 27, 1975; 50 FR 37522, Sept. 16, 1985]

Insurance of Advances

§ 232.55 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 232.56 Assurance of completion.

(a) The mortgagor shall furnish assurance of completion of the project in the form of a personal indemnity agreement, corporate surety bonds for payment and performance, or a completion assurance agreement secured by a cash deposit. All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies issuing bonds and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner. The minimum requirements for assurance of completion are as follows:

(1) Where the estimated cost of construction or rehabilitation is $500,000 or less, the assurance of completion will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as general contractor, or by the individuals operating as the general contractor. Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, the assurance shall be as set forth in paragraph (a)(2) or (3) of this section.

(2) Where a structure contains no elevator or where the structure contains an elevator and is three stories or less, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost or a completion assurance agreement secured by a cash deposit in the amount of 15 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(3) Where the structure contains an elevator and is four stories or more, assurance shall be by corporate surety bonds for payment and performance each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 25 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

[36 FR 24618, Dec. 22, 1971, as amended at 41 FR 41517, Sept. 22, 1976; 48 FR 44070, Sept. 27, 1983]

§ 232.57 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that: (1) Storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* The general contrac-

tor of the insured mortgaged property shall have the responsibility for: (1) Insuring the components in the name of the mortgagor while in transit and storage; and (2) delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

[44 FR 8197, Feb. 8, 1979, as amended at 48 FR 15898, Apr. 13, 1983]

Special Requirements

§ 232.60 Escrow for offsite utilities and streets.

(a) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If the mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 232.61 Equity requirements.

(a) *Funds and finances—in general.* The mortgagor shall establish to the Commissioner's satisfaction that, in addition to the proceeds of the insured mortgage, the mortgagor has adequate funds to meet the expenses of the project (including the cost of equip-

ment and supplies not to be purchased with mortgage proceeds) for such period as the Commissioner estimates as necessary to establish a sustaining level of operation.

(b) *Funds and finances—insured advances.* If the commitment provides for insurance of advances during construction, in addition to meeting the requirements of paragraph (a) of this section, the mortgagor shall meet the following requirements:

(1) Where the mortgagor is other than a private nonprofit corporation or association, it shall deposit with the mortgagee prior to initial endorsement, an amount determined by the Commissioner to be sufficient to meet, during the course of construction, the payments to accruals required by the terms of the mortgage, for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage.

(2) Before initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to the construction of the project. The cash shall be held by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such cash to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any mortgage money. If all or part of the funds required under this paragraph are to be provided through a grant or loan from a Federal, State, or local governmental agency or instrumentality, mortgage proceeds may, with the prior approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds to pay the cost of work, material, or other charges and expenses. However, if any portion of these funds is to be provided by the mortgagor, that portion must be disbursed in full before the disbursement of the mortgage proceeds.

(3) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(c) *Deposit and use of funds.* Unless other arrangements acceptable to the Commissioner are made, the funds referred to in paragraphs (a) and (b) of this section shall be deposited with and held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner.

(d) *Letter of credit or agreement.* The mortgagee may accept, in lieu of a cash deposit required by paragraphs (a), (b)(1) and (b)(3) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. If all or part of the funds required under paragraph (b)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept for the portion so provided, in lieu of a cash deposit required by paragraph (b)(2) of this section, either an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution or an agreement, as described in § 207.19(c)(7), which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee. The mortgagee of record may not be the issuer of any letter of credit referred to in this paragraph without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance under the letter of credit.

[36 FR 24618, Dec. 22, 1971, as amended at 48 FR 35392, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

§ 232.62 Advance amortization requirements.

(a) If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result

of the operation of the project, such net income, to the extent determined by the Commissioner, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset the cost of approved capital improvements.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement. In addition to being applicable to commitments issued on or after December 3, 1963, the provisions of this subparagraph shall be applicable to commitments outstanding on such date where the mortgage has not received final endorsement.

(b) The provisions of paragraph (a) of this section shall not be applicable to a mortgagor that is a private nonprofit corporation or association.

Prevailing Wage Requirements

§ 232.70 Labor standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the regulations under 29 CFR Part 5.

[49 FR 45127, Nov. 15, 1984]

§ 232.71 Ineligible contractors.

No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

[49 FR 45127, Nov. 15, 1984]

§ 232.72 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list, established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

[49 FR 45127, Nov. 15, 1984]

§ 232.73 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 232.74 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

Cost Certification Requirements

§ 232.80 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over 90 percent of the actual cost of the project. Under this agreement the mortgagor shall agree to:

(1) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers;

(2) Enter into a construction contract in a form meeting the requirements of § 232.81;

(3) Execute a certificate of actual costs upon completion of the improvements; and

(4) Apply any excess of mortgage proceeds over 90 percent of the actual cost to reduction of the outstanding balance of the principal of the mortgage.

(b) The provisions of paragraphs (a) (1) and (2) of this section shall not apply where the mortgagor is the general contractor.

§ 232.81 Form of contract.

(a) *In general.* The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by the Commissioner.

(b) *Lump sum contract.* A lump sum contract may be used where it is established to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor, and where the mortgage is executed by a mortgagor established to operate a proprietary project.

(c) *Cost plus contract.* A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(2) Where the mortgage is executed by a mortgagor established to operate a private nonprofit project, unless it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

(d) *Federal or State assisted projects.* Where the mortgagor is to receive a Federal or State grant in connection with the development of the project, a lump sum contract may be used whether or not a cost plus form of contract would otherwise be required by the provisions of paragraph (c) of this section.

[36 FR 24618, Dec. 22, 1971, as amended at 50 FR 37522, Sept. 16, 1985]

§ 232.82 Certificate as to subcontracts.

If the Commissioner determines that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor shall certify in form prescribed by the Commissioner prior to final endorsement of the mortgage for insurance that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 232.83 Lump sum contract—certification of actual cost.

The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, or partners, of:

(a) The construction contract, where the mortgagor and the general contractor are separate entities, or the construction of the project where the mortgagor is the general contractor and there is no such contract. In the case of a lump sum contract, the amount shown in the certificate shall include all payments under the contract;

(b) Architect's fee;

(c) Offsite public utilities and streets not included in the general contract;

(d) Organizational and legal work; and

(e) Other items of expense approved by the Commissioner.

§ 232.84 Fixed fee contract—additional certification.

When the work has been completed under a fixed fee contract or by a mortgagor who is also the general contractor the mortgagor's certification shall also show:

(a) Such allocations of general overhead items as are acceptable to the Commissioner; and

(b) A reasonable allowance for the builder's profit as established by the Commissioner.

§ 232.85 Contractor's certification.

(a) *Certification by general contractor.* Where a cost plus form of contract is used, the mortgagor shall submit along with its certification of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, or partners.

(b) *Certification by subcontractor.* Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners, and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 232.86 Records.

The mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

§ 232.87 Certificate of public accountant.

The certificates of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 232.88 Value of land.

Upon receipt of the mortgagor's certification of actual cost, there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, of acquiring the leasehold or other interest shall be considered an allowable expense which may be added to actual cost. In no event shall such cost be in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

§ 232.89 Reduction in mortgage amount.

If the principal obligation of the mortgage exceeds 90 percent of the total amount as shown by the certificate of actual cost plus the value of the land (the cost shown by the certificate of actual cost in rehabilitation cases), the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 232.90 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted by new construction in accordance with this part and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or 90 percent of the Commissioner's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price or the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the applicable 90 percent of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 232.90a Reinsurance of Commissioner-held mortgages.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under any section or title of the Act.

§ 232.91 Effects of agreement.

Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

§ 232.92 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

Title

§ 232.93 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 232.94 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b), (c), or (d) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without ex-

pense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

EXTENSION OF TIME

§ 232.96 Actions by Commissioner.

Where the mortgagee has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 232.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations

§ 232.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of Part 207, Subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages insured under section 232 of the Act.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 232 of the Act.

[36 FR 24618, Dec. 22, 1971, as amended at 50 FR 38787, Sept. 25, 1985]

§ 232.252 Definitions.

All of the definitions contained in § 232.1 shall apply to this subpart. In addition, as used in this part, the following term shall have the meaning indicated:

(a) "Contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

Subpart C—Eligibility Requirements—Supplemental Loans to Finance Purchase and Installation of Fire Safety Equipment

SOURCE: 39 FR 28966, Aug. 12, 1974, unless otherwise noted.

§ 232.500 Definitions.

In addition to the definitions contained in Subpart A, incorporated herein by reference, the following terms, as used in §§ 232.500 et seq., shall have the meaning indicated:

(a) "Insured loan" means a loan insured by the endorsement of the credit instrument by the Commissioner.

(b) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(c)(1) "Fire safety equipment" means equipment that is purchased, installed, and maintained in a nursing home, intermediate care facility, or

board and care home and that meets the requirements for the appropriate level of occupancy under one of the following standards:

(i) The Life Safety Code of the National Fire Protection Association (any edition after 1966); or

(ii) A standard mandated by a State, under the provisions of section 1616(e) of the Social Security Act; or

(iii) Any appropriate requirement approved by the Secretary of Health and Human Services for providers of services under title XVIII or title XIX of the Social Security Act.

(2) In addition to those requirements approved by the Secretary of Health and Human Services as necessary for the appropriate level of occupancy, "fire safety equipment" may also include fire safety-related improvements that are not mandatory under the requirements of the Secretary of Health and Human Services, but which the Secretary of Health and Human Services considers acceptable and reasonable for protection against the hazards of fire and which the borrower agrees to install.

(3) For the purposes of this definition, the terms "nursing home" and "intermediate care facility" shall include those facilities designated as skilled nursing facilities or intermediate care facilities by the Department of Health and Human Services.

(d) "Fire safety loan" means any form of secured or unsecured obligation determined by the Commissioner to be eligible for insurance under this subpart and, in the case of a board and care home, made with respect to such a home located in a State which the Secretary has determined is in compliance with the provisions of section 1616(e) of the Social Security Act.

(e) "Equipment cost" means the reasonable cost of "fire safety equipment" fully installed as estimated by the Secretary of Health and Human Services and as determined by the Commissioner.

(f) "Insured loan maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan instrument or instruments.

(g) "Approved lender" means a financial institution or other mortgagee approved by the Commissioner as eligible for insurance under section 2 of the National Housing Act, or a mortgagee approved under section 203(b)(1) of the National Housing Act.

[39 FR 28966, Aug. 12, 1974, as amended at 50 FR 37522, Sept. 16, 1985]

Fees and Charges

§ 232.505 Application and application fee.

(a) *Prior approval.* An application for insurance of a fire safety loan under this part shall be considered only in connection with a proposal which has been approved by the Secretary of Health and Human Services, or his designee, based upon (1) his determination of need for such equipment to be installed in the facility as a condition for participation for providers of services under Title XVIII and Title XIX of the Social Security Act, and (2) his determination that upon installation of such equipment the project will meet the fire safety requirements prescribed by the Secretary of HHS for participation under Titles XVIII and XIX of the Social Security Act, and (3) his judgment that the cost estimate for purchase and installation of the equipment is a reasonable cost estimate.

(b) *Filing of application.* An application for insurance of fire safety loan for a nursing home, intermediate care facility or board and care home shall be submitted on an approved HUD form by an approved lender and by the owners of the project through the local HUD office.

(c) *Application fee.* An application fee of $2.00 per thousand dollars of the amount of the fire safety loan applied for shall accompany the application. The minimum application fee shall be $50.00.

(Information collection requirement approved by the Office of Management and Budget under control number 2502-0029)

[39 FR 28966, Aug. 12, 1974, as amended at 50 FR 37523, Sept. 16, 1985]

§ 232.510 Commitment and commitment fee.

(a) *Issuance of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the fire safety loan will be insured.

(b) *Type of commitment.* The commitment will provide for the insurance of the loan after satisfactory completion of installation of the fire safety equipment, as determined by the Secretary of HHS.

(c) *Term of commitment.* (1) If the commitment fee is paid as required, a commitment shall have a term within which the borrower is required to begin construction, and if construction is begun as required, for such additional period as the Commissioner deems necessary for satisfactory completion of installation.

(2) The term of a commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Commitment fee.* A commitment fee which, when added to the application fee, will aggregate $4.00 per thousand of the amount of the fire safety loan (with a minimum total of $50.00 for both fees) set forth in the commitment, and shall be paid prior to issuance of the commitment.

(e) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 10 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 10-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(f) *Increase in commitment prior to endorsement.* An application, filed prior to endorsement, for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. The combined additional fee shall be in an amount which will aggregate $4.00 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. The additional inspection fee shall be paid prior to the date installation of fire safety equipment, is begun or, if installation has begun, it shall be paid with the application for increase.

§ 232.515 Refund of fees.

If the amount of the commitment issued or an increase in loan prior to endorsement is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that the installation of fire safety equipment for the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine.

§ 232.520 Maximum fees and charges by lender.

The lender may collect from the borrower the amount of the fees provided for in this subpart. The lender may also collect from the borrower an initial service charge in an amount not to exceed one and one-half of one percent of the original principal amount of the loan to reimburse the lender for the cost of originating and closing the transaction. Any additional charges shall be subject to the prior approval of the Commissioner.

§ 232.522 Inspection fee.

The commitment shall provide for the payment of an inspection fee in an amount not to exceed $5.00 per thou-

sand dollars of the commitment. The minimum inspection fee shall be $50.00 paid prior to the date construction is begun: *Provided, however,* That in no case shall the combined total of the fees provided for in §§ 232.505, 232.510 of this section exceed one percent of the original principal face amount of the loan.

ELIGIBLE SECURITY INSTRUMENTS

§ 232.525 Note and security form.

The lender shall present for insurance a note and security instrument, if required, on forms approved by the Commissioner for use in the jurisdiction in which the property to be improved is located.

§ 232.530 Disbursement of proceeds.

At the time of endorsement for insurance of the note by the Commissioner, the entire principal amount of the note shall have been disbursed to the borrower or to his creditors for his account and with his consent.

§ 232.535 Loan multiples—minimum principal.

The loan shall involve a principal obligation in multiples of $100, and the minimum principal obligation shall be $10,000.

[40 FR 4908, Feb. 3, 1975]

§ 232.540 Method of loan payment and amortization period.

(a) *Monthly payments.* The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payment in accordance with the amortization plan as agreed upon by the borrower, the lender and the Commissioner.

(b) *Amortization period.* (1) The loan shall have an amortization of either 5, 10, or 15 years by providing for either 60, 120, or 180 monthly amortization payments. No fire safety loan shall have an amortization period in excess of 15 years unless the amount of the loan exceeds $50,000.00, in which event the amortization period may be increased to 20 years, with a provision for 240 monthly amortization payments.

(2) In any event, the loan shall have a maturity satisfactory to the Commissioner of not less than 5 or more than 20 years from the date of the beginning of amortization or the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

(3) The Commissioner shall establish the date of the first payment to the principal.

§ 232.545 Covenant against liens.

(a) The security instrument shall contain a covenant against the creation by the borrower of additional liens against the property superior or inferior to the lien of such instrument, except with the prior approval of the Commissioner.

(b) The covenant required under paragraph (a) of this section shall not apply where a lien inferior to the lien of the insured mortgage is given in favor of a Federal, State or local governmental agency or instrumentality under such circumstances as may be approved by the Commissioner, provided the source of funds for repayment of the inferior lien is limited to surplus cash or residual receipts.

[36 FR 24641, Dec. 22, 1971, as amended at 48 FR 35393, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

§ 232.550 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner.

§ 232.555 Security instrument and lien.

The security instrument shall cover the entire property included in the project, shall be a lien on the real property of the project under the laws of the jurisdiction in which the project is located, and may be junior to such prior liens or mortgages indebtedness as the Commissioner may approve. The Commissioner may from time to time require such other securi-

ty, in lieu of, or in addition to, a lien on real property as he may prescribe.

§ 232.560 Interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower.

(b) Interest shall be payable in monthly installments on the principal amount of the loan outstanding on the due date of each installment.

[39 FR 28966, Aug. 12, 1974, as amended at 53 FR 3366, Feb. 5, 1988; 53 FR 8885, Mar. 18, 1988]

§ 232.565 Maximum loan amount.

The principal amount of the loan shall not exceed the lower of the Commissioner's estimate of the cost of the fire safety equipment, including the cost of installation, or the amount supported by the residual income, which is the amount of net income remaining after payment of all existing debt service requirements and deduction of the proprietary earnings, as determined by the Commissioner. The cost of installation may include the cost of such other work to be performed on the project necessary to meet the requirements of the Secretary of Health and Human Services and the Commissioner to enhance the fire safety of the project, and such costs incidental to installation as may be approved by the Commissioner.

[40 FR 4908, Feb. 3, 1975]

§ 232.570 Endorsement of credit instrument.

The Commissioner shall indicate his insurance of the loan by endorsing the credit instrument and identifying the section of the Act and regulations under which the loan is insured and the date of insurance, subject to the presentation and approval by him of the following:

(a) Certification of full disbursement of loan proceeds as provided for in § 232.530.

(b) Certification of costs as required by § 232.610.

(c) Statement by the Secretary of Health and Human Services that the fire safety equipment noted in the determination required by § 232.620 has been satisfactorily installed.

§ 232.580 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and this aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan;

(3) Amortization of the principal of the loan;

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute an event of default and the loan shall further provide for a grace period of 30 days within which time the default must be cured.

§ 232.585 Prepayment privilege and prepayment charge.

The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days' advance written notice and it may contain a provision, with the approval of the Commissioner, for a reasonable charge in the event of prepayment.

§ 232.586 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8885, Mar. 18, 1988]

Property Requirements

§ 232.590 Eligibility of property.

(a) A loan to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than "twenty-five" years to run from the date the loan is executed.

(b) The property constituting security for the loan transaction must be held by an eligible borrower as herein defined and must at the time the loan is insured be free and clear of all liens other than those specifically approved by the Commissioner.

[39 FR 28966, Aug. 12, 1974; 39 FR 30349, Aug. 22, 1974]

Title

§ 232.595 Eligibility of title.

In order for the property which is to be the security for a loan to be insured under this subpart to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 232.600 Title evidence.

The lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance, or if the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender without expense to the Commissioner, shall furnish an abstract of title. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will become an owner's policy running to the lender or the Secretary, as the case may be.

(b) The abstract of title shall be satisfactory to the Commissioner, prepared by an abstract title company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

Form of Contract

§ 232.605 Contract requirements.

(a) The contract between the mortgagor and the general contractor may be in the form of either a lump sum contract or a cost plus contract. Either form of contract shall include the cost of fire safety equipment, its installation, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary of Health and Human Services and the Commissioner. A lump sum contract shall provide for the payment of a specified amount. A cost plus contract shall provide for the payment of the contractor's actual cost of compliance with the requirements of the contract, plus such allowance for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed an upset price as approved by the Commissioner.

(b) If agreed to by the general contractor and borrower, a lump sum form of contract between the borrower and the general contractor may be used unless the Commissioner determines that a cost plus contract with a maximum upset price is necessary to protect the interests of the borrower or the Commissioner.

Cost Certification Requirements

§ 232.610 Certification of cost requirements.

(a) *Certificate and adjustment.* No loan shall be insured unless:

(1) A certification of actual cost is made by the contractor in cases in which a cost plus form of contract is used; and

(2) The amount of the loan is adjusted to reflect the actual cost to the borrower of the improvements when either a cost plus or lump sum form of contract is used.

(b) *Cost computation.* The term "actual cost of the improvements" shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates, or trade discount received in connection

with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner.

(c) *Statement of facts.* Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(d) *Incontestability.* Upon the Commissioner's approval of the cost certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(e) *Records.* The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records, including any collateral agreements.

ELIGIBLE BORROWERS

§ 232.615 Eligible borrowers.

(a) In order to be eligible as a borrower under this subpart the applicant shall be a profit or non-profit entity, which owns a nursing home or intermediate care facility for which the Secretary of Health and Human Services has determined that the installation of fire safety equipment in such facility is necessary to meet the applicable requirements of the Secretary of Health and Human Services for providers of services under Title XVIII and Title XIX of the Social Security Act and that upon completion of the installation of such equipment the nursing home or intermediate care facility will meet not only the applicable fire safety requirements of HHS but will meet other pertinent health and safety requirements of HHS for providers of such services. At the time of application, a nursing home or intermediate care facility need not be providing such services if upon completion of installation such home or facility will meet other pertinent health and safety requirements of HHS for providers of such services. In lieu of a facility being able to meet HHS's requirements for other pertinent health and safety requirements at the time of application, HHS may accept a list of deficiencies from the State Agency responsible for determining compliance with HHS's requirements for other pertinent health and safety requirements for providers of such services along with a plan prepared by the applicant for correcting those deficiencies. In such event, HHS will inform HUD that, if the facility complies with such plan, the facility will meet the applicable health and safety requirements of HHS for providers of services under Titles XVIII and XIX of the Social Security Act upon the installation of the fire safety equipment. Until the termination of all obligations of the Commissioner under an insurance contract under this subpart and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the loan, the borrower shall be regulated or restricted by the Commissioner as to methods of operation including requirements for maintenance of fire safety equipment.

(b) Also eligible as a borrower shall be a profit or non-profit entity which owns a board and care home for which HUD has determined that the installation of fire safety equipment is approvable under the definition contained in § 232.500(c).

[39 FR 28966, Aug. 12, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 50 FR 37523, Sept. 16, 1985]

§ 232.616 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39695, Sept. 27, 1989]

Special Requirements

§ 232.620 Determination of compliance by HHS.

An application under this subpart must be accompanied by a statement from the Secretary of Health and Human Services, or his designee, that the Secretary has determined that the physical plant of the facility, when the fire safety equipment has been installed, will be in compliance with the HHS requirements for fire safety and will meet other pertinent health and safety requirements of HHS for providers of services under Title XVIII and XIX of the Social Security Act (Medicare and Medicaid). In lieu of a facility being able to meet HHS's requirements for other pertinent health and safety requirements at the time of application, HHS may accept a list of deficiencies from the State Agency responsible for determining compliance with HHS's requirements for other pertinent health and safety requirements for providers of such services along with a plan prepared by the applicant for correcting those deficiencies. In such event, HHS will inform HUD that, if the facility complies with such plan, the facility will meet the applicable health and safety requirements of HHS for providers of services under Titles XVIII and XIX of the Social Security Act upon the installation of the fire safety equipment. The architectural exhibits, as approved, by HHS, together with any commitment requirements HHS deems appropriate, must accompany the statement. In the case of Intermediate Care Facilities, the statement by HHS to HUD will be based upon a determination that the facility has been approved in accordance with applicable HHS statutes and regulations, subject to the proper installation of the proposed equipment.

§ 232.625 Discrimination prohibited.

Any contract or subcontract executed for the installation of equipment, or construction of improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of sex, religion, race, color, creed or national origin.

§ 232.630 Assurance of completion.

If the property upon which the fire safety equipment is to be installed is subject to a mortgage insured or held by the Commissioner pursuant to Subpart B of this part, the Commissioner may require such assurance of completion of the contract for installation as he may from time to time prescribe.

Subpart D—Contract Rights and Obligations

Source: 39 FR 28970, Aug. 12, 1974, unless otherwise noted.

§ 232.800 Definitions.

All of the definitions contained in § 232.500 shall apply to this subpart. In addition, as used in this subpart, the following term shall have the meaning indicated:

(a) "Contract of insurance" means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan and includes the provisions of this subpart and the applicable provisions of the Act.

(b) "Maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan.

Premiums

§ 232.805 Insurance premiums.

(a) *First premium.* The lender, upon the endorsement of the loan for insurance, shall pay to the Commissioner a first loan insurance premium equal to one percent of the original face amount of the note.

(b) *Second premium.* The lender, on the date of the first principal payment, shall pay a second premium equal to one percent of the average outstanding principal obligation of the loan for the year following such first principal payment date which shall be adjusted as of that date so that the aggregate of the first and second premi-

ums shall equal the sum of one percent per annum of the average outstanding principal obligation of the loan for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(c) *Annual insurance premium.* Until the note is paid in full, or until the loan is assigned to the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the first principal payment shall pay an annual loan insurance premium equal to one percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) *Method of premium payment.* Premiums shall be payable in cash or in debentures of the General Insurance Fund at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as provided in § 232.800 et seq.

(e) *Calculation of premiums.* The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 232.805a Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978]

§ 232.815 Termination of insurance.

(a) *Prepayment in full.* The contract of insurance shall be terminated if the loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment, or 30 days prior to the Commissioner's receipt of the prepayment notice, whichever is later.

(b) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the borrower and the lender for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

§ 232.825 Pro rata refund of insurance premium.

Upon termination of a loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid which is applicable to the portion of the year subsequent to the effective date of the termination.

Rights and Duties of Lender Under the Contract of Insurance

§ 232.830 Definition of default.

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument, the note shall be considered in default for the purposes of this subpart.

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default, provided the lender, because of such default, has exercised its rights under the note or security instrument and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days, the lender shall be entitled to receive the benefits of insurance hereinafter provided.

§ 232.840 Date of default.

In computing loan insurance benefits, the date of default shall be considered as:

(a) The date of the lender's acceleration of the debt because of the borrower's uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they become due.

§ 232.850 Notice of default.

(a) If the default is not cured within the 30 day grace period, as defined in § 232.830(c), the lender shall, within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact that the lender may not have elected to accelerate the debt.

§ 232.860 Commissioner's right to require acceleration.

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or otherwise being apprised thereof, the Commissioner may require the lender to accelerate payment of the outstanding principal balance due.

§ 232.865 Election by lender.

Where a real estate mortgage, or other security instrument has been used to secure the payment of a loan made under the provisions of this subpart and Subpart C of this part, the lender may either elect to assign the loan to the Commissioner in exchange for the payment of insurance benefits or may exercise its rights under the note and security instrument in lieu of making a claim for insurance benefits. If the lender elects the latter course, the Commissioner shall be so notified and the contract of insurance shall be deemed terminated upon the date of receipt of such notification.

§ 232.875 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 232.880 Items to be delivered on submitting claim.

Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commission in writing, the lender shall deliver to the Commissioner:

(a) The fiscal data pertaining to the loan transactions;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments are prior to all mechanics' and material-men's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default and all claims of the lender against the

borrower or others arising out of the loan transaction;

(e) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner;

(f) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(g) Any additional information or data which the Commissioner may require;

(h) The following cash items, held in connection with the loan insured under this subpart, shall either be retained by the lender or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner at the time the insurance claim is filed.

(1) Any cash held by the lender or its agents or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal of the loan indebtedness.

(2) All funds held by the lender for the account of the borrower received pursuant to any other agreement.

§ 232.885 Insurance benefits.

(a) *Method of payment.* Payment of claim shall be made in the following manner:

(1) *Payment in cash.* Unless a written request for payment in debentures is filed with the application, payment shall be made in cash.

(2) *Optional payment in debentures.* Payment shall be made in debentures upon filing a written request with the application.

(b) *Amount of payment.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in an amount equal to the unpaid principal balance of the loan as of the date of default determined as follows:

(1) By adding the following items:

(i) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(ii) Any advances approved by the Commissioner made previously by the lender under the provisions of the note or security instrument or instruments.

(iii) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(iv) Any loan insurance premiums paid after default.

(v) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned thereon, as of the date such cash payment is made, except when the lender fails to meet any one of the applicable requirements of §§ 232.850, 232.875, and 232.880, within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section the following items:

(i) Any amount received by the lender on account of the loan after the date of default.

(ii) Any net income received by the lender from the property covered by the note or security instrument and not applied to prior debts held by that lender.

(iii) The sum of the cash items retained by the lender pursuant to § 232.880(h)(i)(ii).

§ 232.890 Characteristics of debentures.

Debentures issued in settlement of insurance claims under this subpart shall have the same characteristics and the same requirements for registration and redemption as those issued pursuant to Subpart B of this part except that debentures shall bear interest at the rate in effect as of the date the commitment was issued, or as of the date the loan was first endorsed for insurance, whichever rate is higher and shall mature 10 years from the date of issue which date shall be the

date of execution of the assignment of the loan to the Commissioner.

§ 232.893 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, shall be adjusted by the issuance of a check in payment thereof.

ASSIGNMENTS

§ 232.895 Assignment of insured loans.

(a) An insured loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm, or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan to other than an approved lender.

EXTENSION OF TIME

§ 232.897 Actions to be taken by lender.

With respect to any action required of the lender within a period of time prescribed by this subpart, the Commissioner may extend such period.

Subpart E—Insurance of Mortgages Covering Existing Projects

SOURCE: 53 FR 33735, Aug. 31, 1988, unless otherwise noted.

§ 232.901 Mortgages covering existing insured projects are eligible for insurance.

Notwithstanding the generally applicable requirement that mortgages insured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for insurance, a mortgage executed in connection with the purchase or refinancing of an existing Project covered by a mortgage insured by the Commissioner may be insured under this subpart pursuant to section 223(f) of the Act. A mortgage insured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

§ 232.902 Eligible project.

(a) Existing Projects covered by a mortgage insured under section 232 of the Act (with such repairs and improvements as are determined by the Commissioner to be necessary) are eligible for insurance under this subpart. The Project must not require substantial rehabilitation as defined in paragraph (b) of this section and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for insurance. In addition, the Project must have attained sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the Commissioner, before endorsement of the Project for insurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the Commissioner.

(b) "Substantial rehabilitation" consists of repairs, replacements, improvements and additions:

(1) The cost of which exceeds the greater of fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

(i) Roof structures;

(ii) Ceiling, wall, or floor structures;

(iii) Foundations;

(iv) Plumbing systems;

(v) Heating and air conditioning systems;

(vi) Electrical systems.

§ 232.903 Maximum mortgage limitations.

Notwithstanding the maximum mortgage limitations set forth in § 232.30, a mortgage within the limits set forth in this section shall be eligible for insurance under this subpart.

(a) *Value limit.* The mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the Commissioners estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The Commissioner's estimate of value shall result from consideration of:

(1) Estimated market value of the Project by capitalization,

(2) Estimated market value of the Project by direct sales comparison, and

(3) Total estimated replacement cost of the Project.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The insured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for debt service shall be determined by reducing the Commissioner's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the insured mortgage (i.e., without a change of ownership or with the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the insured mortgage), the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(1) The amount required to pay off the existing indebtedness;

(2) The amount of the initial deposit for the reserve fund for replacements;

(3) Reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 232.15;

(4) The estimated repair costs, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisitions as determined by the Commissioner. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price is indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgagee fees under § 232.15;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

§ 232.904 Term of the mortgage.

Notwithstanding the provisions of § 232.27, a mortgage insured under this subpart must have a maturity satisfactory to the Commissioner which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for insurance.

§ 232.905 Labor standards and prevailing wage requirements.

The provisions of §§ 232.70–232.74 of this part shall not apply to mortgages insured under commitments issued in accordance with this subpart.

§ 232.906 Processing and commitment.

Notwithstanding the provisions of §§ 232.5, 232.10 and 232.12 of this part, a mortgage insured under this subpart shall meet the following application's commitment, inspection and fee requirements.

(a) *Application.* An application for a conditional or firm commitment for insurance of a mortgage on a Project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD office on an FHA approved form. No application shall be considered unless accompanied by the exhibits required by the form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of the improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completing of specified repairs and improvements after endorsement.

(b) *Application fee—conditional commitment.* An application-commitment fee of $2 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of $3 per thousand dollars of the requested mortgage amount to be insured less the amount of any fee previously received for a conditional commitment.

(d) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee of up to one percent (1%) of the cost of the repairs and improvements may be charged by the Commissioner.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Homes

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Subpart G—Servicing Responsibilities—Homes

233.950 Cross-reference.

AUTHORITY: Sec. 211, 52 Stat. 23, as amended; sec. 233, 75 Stat. 158, as amended; 12 U.S.C. 1715b, 1715x.

SOURCE: 36 FR 24626, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Homes

§ 233.1 Scope of subpart.

Mortgages and loans financing construction or rehabilitation of one- to four-family dwellings (or one- to eleven-family dwellings in the case of mortgages or loans meeting the requirements of section 220 of the Act) and which involve the utilization and testing of advanced technology in housing design, material or construction or experimental property standards for neighborhood design, may be insured under section 233 of the Act. To be eligible, a mortgage or loan shall also meet the requirements of the applicable home mortgage or home improvement loan program under section 203, 213, 220, 221 or 234 of the Act.

§ 233.5 Cross-reference.

(a) To be eligible for insurance under this subpart, a mortgage or home improvement loan shall meet the eligibility requirements for insurance under § 203.1 et seq. (Part 203, Subpart A); § 213.501 et seq. (Part 213, Subpart C); § 220.1 et seq. (Part 220, Subpart A); § 221.1 et seq. (Part 221, Subpart A); § 234.1 et seq. (Part 234, Subpart A); § 235.1 et seq. (Part 235, Subpart A); § 237.1 et seq. (Part 237, Subpart A); or § 809.1 et seq. (Part 809, Subpart A) of this chapter, except that:

(1) The prescribed tests of economic soundness or acceptable risk shall not be applicable.

(2) In lieu of establishing mortgage limits upon the basis of a percentage of the Commissioner's estimate of appraised value, or replacement cost, or cost of repair and rehabilitation, as required by the applicable section under which the mortgage or loan would otherwise be eligible, the mortgage limits shall be determined by applying the percentage prescribed by the pertinent section to the following:

(i) In cases involving new construction, such percentage shall be applied to the Commissioner's estimate of the cost of replacing the property using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(ii) In cases involving repair and rehabilitation, such percentage shall be applied to the sum of:

(*a*) The Commissioner's estimate of the value of the property before repair and rehabilitation; plus

(*b*) The lesser of either the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards.

(3) The limitations upon maximum mortgage amount in a case involving a nonoccupant owner shall not be applicable.

(4) In cases involving home improvement loans, instead of establishing mortgage limits upon the basis of the Commissioner's estimate of the cost of such improvements, the limits shall be determined on the basis of the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(5) The negotiated interest rate program described in § 203.51 shall not be applicable.

(6) Mortgages and loans processed under the Direct Endorsement program set forth in § 200.163 shall not be eligible under this part.

(b) For the purposes of this subpart, all references in Parts 203, 213, 220, 221, 234, 235, 237, and 809 of this chapter to sections 203, 213, 220, 221, 234, 235, 237, and 809 of the National Housing Act shall be construed to refer to section 233 of the Act.

[36 FR 24626, Dec. 22, 1971, as amended at 47 FR 16779, Apr. 20, 1982; 48 FR 11941, Mar. 22, 1983]

§ 233.15 Eligible property requirements.

To be eligible for insurance:

(a) The mortgage or home improvement loan shall relate to property involving the utilization and testing of advanced technology in housing design, material, or construction, or experimental property standards for neighborhood design.

(b) The Commissioner shall make determinations as follows:

(1) That the property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards.

(2) That the utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability or improving neighborhood design.

(c) The dwelling shall be approved for insurance by the Commissioner prior to the beginning of construction or repair, rehabilitation or improvement.

§ 233.30 Agreements, covenants and easements.

Prior to insurance, the mortgagor or borrower shall execute such agreements, covenants and easements running with the land as the Commissioner shall determine are necessary to permit the Commissioner to make inspections and technical observations of the experimental features of the project.

WAIVERS

§ 233.248 Waivers.

The Secretary in any individual case may waive any requirement of Subparts A and C of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35959, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations—Homes

§ 233.251 Cross-reference.

(a) Mortgages and home improvement loans insured under the experimental home mortgage insurance program shall be governed by the provisions of the regulations covering contract rights and obligations, as they respectively relate to the several mortgage or home improvement loan programs set forth in § 233.1 of this part, except that provisions of the foregoing regulations concerning mutuality of an insurance fund shall not apply.

(b) For the purpose of this subpart, all of the references in § 203.251 et seq. (Part 203, Subpart B); § 213.751 et seq. (Part 213, Subpart D); § 220.251 et seq. (Part 220, Subpart B); § 221.251 et seq. (Part 221, Subpart B); § 234.251 et seq. (Part 234, Subpart B); § 235.201 et seq. (Part 235, Subpart B); § 237.201 et seq. (Part 237, Subpart B); or § 809.251 et seq. (Part 809, Subpart B) of this chapter to:

(1) Section 203, 213, 220, 221, 234, 235, 237, or 809 shall be construed to refer to section 233 of the Act; and

(2) The Mutual Mortgage Insurance Fund, the Cooperative Management Housing Insurance Fund, or the Special Risk Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 233.253 Application for insurance benefits and accompanying fiscal data.

(a) *Insured mortgages.* Where an insured mortgage is involved, the provisions of §§ 203.350 through 203.391 of this chapter govern the filing of an application for insurance benefits and the items to be filed with the application.

(b) *Insured home improvement loans.* Where an insured home improvement loan is involved, the provisions of § 203.476 of this chapter (relating to claim application and items to be filed) shall be applicable.

§ 233.275 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, all of the insurance claim, in a case involving either an insured mortgage or an insured home improvement loan, shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any differences between the total amount of the claim and the amount of the debentures issued.

Subpart C—Assistance Payments

§ 233.401 Cross-reference.

(a) *Section 235 type home mortgages.* All of the provisions of Subpart C, Part 235, concerning assistance payments pursuant to section 235 of the Act, apply with full force and effect to a mortgage insured under Subparts A and B of this part, if the mortgage is insured as meeting the eligibility requirements of § 235.1 et seq. (Part 235, Subpart A), except as such requirements are modified by § 233.5.

(b) *Section 237 type home mortgages.* All of the provisions of Subpart C, Part 237, concerning assistance payments in connection with a mortgage insured under section 237, apply with full force and effect to a mortgage insured under Subparts A and B of this part, if the mortgage is insured as meeting the eligibility requirements of § 237.1 et seq. (Part 237, Subpart A), except as such requirements are modified by § 233.5.

Subpart D—Eligibility Requirements—Projects

§ 233.501 Scope of subpart.

Mortgages and loans financing construction or rehabilitation of multifamily projects which involve the utilization and testing of advanced technology in housing design, material or construction or experimental housing standards for neighborhood design, may be insured under section 233 of the Act. To be eligible, a mortgage or loan shall also meet the requirements of the applicable multifamily project or project improvement loan insurance program under sections 207, 213, 220, 221, 231, 232 or 234 of the Act.

§ 233.505 Cross-reference.

(a) To be eligible for insurance under this subpart, a mortgage or project improvement loan shall meet the eligibility requirements for insurance under § 207.1 et seq. (Part 207, Subpart A); § 213.1 et seq. (Part 213, Subpart A); § 220.501 et seq. (Part 220, Subpart C); § 221.501 et seq. (Part 221, Subpart C); § 231.1 et seq. (Part 231, Subpart A); § 232.1 et seq. (Part 232, Subpart A); § 234.501 et seq. (Part 234, Subpart C); § 235.501 et seq. (Part 235, Subpart D); § 236.1 et seq. (Part 236, Subpart A); § 241.1 et seq. (Part 241, Subpart A); § 810.1 et seq. (Part 810, Subpart A); § 1000.1 et seq. (Part 1000, Subpart A); or § 1100.1 et seq. (Part 1100, Subpart A) of this chapter, except that:

(1) The prescribed tests of economic soundness or acceptable risk shall not be applicable.

(2) In lieu of establishing mortgage limits upon the basis of a percentage of the Commissioner's estimate of appraised value, or replacement cost, or cost of repair and rehabilitation, as required by the applicable section under which the mortgage or loan would otherwise be eligible, the mortgage limits shall be determined by applying the percentage prescribed by the pertinent section to the following:

(i) In cases involving new construction, such percentage shall be applied to the Commissioner's estimate of the cost of replacing the property using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(ii) In cases involving repair and rehabilitation, such percentage shall be applied to the sum of:

(*a*) The Commissioner's estimate of the value of the property before repair and rehabilitation; plus

(*b*) The lesser of either the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and

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construction, or of using advanced housing technology or experimental property standards.

(3) In cases involving project improvements, instead of establishing mortgage limits upon the basis of the Commissioner's estimate of the cost of such improvements, the limit shall be determined on the basis of the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(4) In the case of Operation Breakthrough Prototype Site Developments involving expenditure of appropriated funds for research and technology above amounts available from insured mortgage proceeds, the mortgage may be insured without regard to one or more of the regulatory requirements which are not mandatory under controlling statutes.

(b) For the purposes of this subpart, all references in Parts 207, 213, 220, 221, 231, 232, 234, 235, 236, 241, 810, 1000, or 1100 of this chapter to section 207, 213, 220, 221, 231, 232, 234, 235, 236, 241, or 810 of the National Housing Act or to titles X and XI of such Act shall be construed to refer to section 233 of such Act.

[36 FR 24626, Dec. 22, 1971; 43 FR 13511, Mar. 31, 1978]

§ 233.510 Eligible projects.

To be eligible for insurance:

(a) The mortgage or project improvement loan shall relate to property involving the utilization and testing of advanced technology in housing design, material, or construction, or experimental property standards for neighborhood design.

(b) The Commissioner shall make determinations as follows:

(1) That the property is an acceptable risk, giving consideration to the need for testing advanced housing design or experimental property standards.

(2) That the utilization and testing of the advanced technology or experimental property standards involved will provide date or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability or improving neighborhood design.

§ 233.515 Agreements, covenants and easements.

Prior to insurance endorsement, the mortgagor shall execute such agreements, covenants and easements running with the land as the Commissioner shall determine are necessary to allow the Commissioner to make inspections and technical observations of the experimental features of the project.

Subpart E—Contract Rights and Obligations—Projects

§ 233.751 Cross-reference.

(a) Mortgages and project improvement loans insured under the experimental project insurance program shall be governed by the provisions of the regulations covering contract rights and obligations, as they respectively relate to the several mortgage or project improvement loan programs set forth in § 233.501 of this part.

(b) For the purpose of this subpart, all the references in § 207.251 et seq. (Part 207, Subpart B); § 213.251 et seq. (Part 213, Subpart B); § 220.751 et seq. (Part 220, Subpart D); § 221.751 et seq. (Part 221, Subpart D); § 231.251 et seq. (Part 231, Subpart B); § 232.251 et seq. (Part 232, Subpart B); § 234.751 et seq. (Part 234, Subpart D); § 235.701 et seq. (Part 235, Subpart E); § 236.251 et seq. (Part 236, Subpart B); § 241.251 et seq. (Part 241, Subpart B); § 810.251 et seq. (Part 810, Subpart B); § 1000.251 et seq. (Part 1000, Subpart B); or § 1100.251 et seq. (Part 1100, Subpart B) of this chapter to:

(1) Section 207, 213, 220, 221, 231, 232, 234, 235, 236, 241, or 810 of the National Housing Act or to titles X and XI of such Act shall be construed to refer to section 233 of such Act; and

(2) The Cooperative Management Housing Insurance Fund or the Special Risk Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 233.760 Payment of insurance benefits.

(a) *Insured mortgages.* All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except that all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any difference between the total amount of the claim and the amount of the debentures issued.

(b) *Insured project improvement loans.* Where an insured project improvement loan is involved, the payment of insurance benefits shall be governed by §§ 220.822 through 220.842 of this chapter.

Subpart F—Assistance and Interest Reduction Payments

§ 233.900 Cross-reference.

(a) *Section 235(j) type project mortgages.* (1) All of the provisions of Subpart F, Part 235, concerning assistance payments pursuant to section 235(j) of the Act, apply with full force and effect to a mortgage insured under Subparts D and E of this part, if the mortgage is insured as meeting the eligibility requirements of § 235.501 et seq. (Part 235, Subpart D), except as such requirements are modified by § 233.505 et seq.

(2) Reference in § 235.805 to "this part" shall be deemed to refer to Part 233.

(b) *Section 236 type project mortgages.* (1) All of the provisions of Subpart C, Part 236, concerning interest reduction payments pursuant to section 236 of the Act, apply with full force and effect to a mortgage insured under Subparts D and E of this part, if the mortgage is insured as meeting the eligibility requirements of § 236.1 et seq. (Part 236, Subpart A), except as such requirements are modified by § 233.505 et seq.

(2) Reference in § 236.505 to "Subparts A and B of this part" shall be deemed to refer to Subparts D and E of this part.

Subpart G—Servicing Responsibilities—Homes

§ 233.950 Cross-reference.

Mortgages insured under the experimental home mortgage insurance program shall be governed by the provisions of the regulations covering servicing responsibilities as they respectively relate to the several mortgage insurance programs set forth in § 233.1.

[42 FR 29305, June 8, 1977]

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

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AUTHORITY: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24628, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Individually Owned Units

DEFINITIONS

§ 234.1 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Mortgage" means a first lien covering a fee interest or eligible leasehold interest, in a one-family unit in a multifamily project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated, and may refer both to a security instru-

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ment creating a lien, whether called a "mortgage," "deed of trust," "security deed" or other term common in a jurisdiction, as well as the credit instrument, or note, secured thereby.

(e) "Mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) "Mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument by the Commissioner.

(h) "Project mortgage" means a mortgage which is or has been insured under any of the FHA multifamily housing programs, other than sections 213(a)(1) and 213(a)(2) of the Act.

(i) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(j) "Family unit" means a one-family unit including the undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated.

(k) "Project" means a structure or structures containing four or more family units.

(l) "Common areas and facilities" means those areas of the project and of the property upon which it is located that are for the use and enjoyment of the owners of family units located in the project. The areas may include the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space and community and commercial facilities.

(m) "Restricted common areas and facilities" means those areas and facilities restricted to a particular family unit or number of family units.

(n) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(o) "Conversion" means the date on which all documents necessary to create a condominium under State law (and under local law, where applicable) have been recorded.

(p) "Tenant" means the occupant(s) named in the lease or rental agreement of a housing unit in a project as of the date the condominium conversion documents are properly filed for the project, or as of the date on which the occupants are notified by management of intent to convert the project to a condominium, whichever is earlier.

(q) "Bona fide tenants' organization" means an association of tenants formed by the tenants to promote their interests in a particular project, with membership in the association open to each tenant, and all requirements of the association applying equally to every tenant.

[36 FR 24628, Dec. 22, 1971, as amended at 50 FR 4647, Feb. 1, 1985; 52 FR 33807, Sept. 8, 1987; 53 FR 34283, Sept. 6, 1988]

Approval of Mortgagees

§ 234.5 Qualification of lenders.

The provisions of §§ 203.1 through 203.9, inclusive, of this chapter, shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Application and Commitment

§ 234.10 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage under this subpart.

§ 234.11 Form of application.

An application for insurance shall be made upon a standard form prescribed by the Commissioner.

§ 234.12 Approval and commitment.

(a) Upon approval for an application, acceptance of the mortgage for insurance may be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Secretary, the terms and conditions upon which the mortgage will be insured.

(b) Except as set forth in §§ 200.163(b) and 200.164(g), commitments are not issued by HUD under the single family program of Direct Endorsement. Under this program, the

Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163. If the documents are acceptable, the loan is endorsed.

[48 FR 11941, Mar. 22, 1983]

§ 234.13 [Reserved]

§ 234.14 Certification of appraisal amount.

An application for insurance shall be accompanied by an agreement satisfactory to the Commissioner, executed by the seller or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling he will deliver to the purchaser of the property a written statement in form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

§ 234.15 Certificate and contract regarding use of dwelling for transient or hotel purposes.

An application for insurance of a mortgage on a family unit which is one of a group of 5 or more family units owned by the same mortgagor shall be accompanied by a contract, in form satisfactory to the Commissioner, signed by the proposed mortgagor covenanting and agreeing that so long as the proposed mortgage is insured by the Commissioner the mortgagor will not rent the housing or any part thereof covered by the mortgage for transient or hotel purposes, together with the mortgagor's certification under oath that the housing or any part thereof covered by the proposed mortgage will not be rented for transient or hotel purposes. For the purpose of this subchapter rental for transient or hotel purposes shall mean: (a) Rental for any period less than 30 days; or (b) any rental if the occupants of the unit are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

§ 234.16 Certificate of nondiscrimination by mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 234.17 Mortgagor and mortgagee requirements for maintaining flood insurance coverage.

(a) If the mortgage is to cover property that (1) is located in an area designated by the Secretary as a flood plain area having special flood hazards, or (2) is otherwise determined by the Commissioner to be subject to a flood hazard; and if flood insurance under the National Flood Insurance Program (NFIP) is available with respect to such property, the mortgagor and mortgagee shall be obligated, by a special condition to be included in the mortgage insurance commitment, to obtain and to maintain NFIP flood insurance coverage on the property during such time as the mortgage is insured. The flood insurance to be maintained shall be in an amount at least equal to either the outstanding balance of the mortgage, less estimated land costs, or the maximum amount of NFIP insurance available with respect to the property, whichever is less. The maintenance of flood insurance coverage on the project by the Association will satisfy the requirements of this section if such coverage protects the interest of the mortgagor in the family unit. For this purpose

the interest of the mortgagor is defined as insurance coverage equal to the replacement cost of the project less land costs.

(b) No mortgage shall be insured which covers property located in an area that has been identified by the Secretary as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program, and such insurance is obtained by the mortgagor. Such requirement for flood insurance shall be effective July 1, 1975, or one year after the date of notification by the Secretary to the chief executive officer of a flood prone community that such community has been identifed as having special flood hazards, whichever is later. The amount of flood insurance required need not exceed the principal balance of the mortgage, less estimated land costs, and need not be required beyond the term of the mortgage.

[45 FR 60426, Sept. 12, 1980]

Eligible Mortgages

§ 234.25 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in a particular jurisdiction or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

(b) Mortgage multiples. The mortgage shall involve a principal obligation in multiples of $50.

(c) *Payments and maturity dates.* The mortgage shall:

(1) Provide for payments to become due on the first day of the month.

(2) Have a maturity satisfactory to the Commissioner of not more than 30 years from the date of the beginning of amortization, except that the term may be up to 35 years from the date of the beginning of amortization in either of the following instances:

(i) The mortgagor is an owner-occupant of the property and is not able, as determined by the Commissioner, to make the required payments under a mortgage having a shorter amortization period.

(ii) The application for the conversion of an insured project to condominium ownership was received by the Commissioner prior to August 10, 1965.

(3) The mortgage shall contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

(4) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

(d) *Property standards.* The mortgage must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(e) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

[36 FR 24628, Dec. 22, 1971, as amended at 45 FR 29278, May 2, 1980; 45 FR 60426, Sept. 12, 1980; 48 FR 12085, Mar. 23, 1983; 49 FR 21320, May 21, 1984; 53 FR 34283, Sept. 6, 1988]

§ 234.26 Project requirements.

No mortgage shall be eligible for insurance unless the following requirements are met:

(a) *Location of family unit.* The family unit shall be located in a project that the Commissioner determines to be acceptable.

(b) *Plan of condominium ownership.* The project in which the unit is located shall have been committed to a plan of condominium ownership by a deed, or other recorded instrument,

that is acceptable to the Commissioner.

(c) *Releases.* The family unit shall have been released from any mortgage covering the project or any part of the project.

(d) *Certificate by mortgage.* The mortgagee shall certify that:

(1) The deed of the family unit and the deed or other recorded instrument committing the project to a plan of condominium ownership comply with legal requirements of the jurisdiction.

(2) The mortgagor has good marketable title to the family unit, subject only to a mortgage that is a valid first lien on the family unit.

(3) The family unit is assessed and subject to assessment for taxes pertaining only to that unit.

(e) *Conditions and provisions.* (1) The Commissioner may require such conditions and provisions as the Commissioner determines are necessary for the protection of consumers and the public interest.

(2) An application for mortgage insurance of a unit will not be approved if approval would result in less than 80 percent of the FHA-insured mortgages covering units in the projects being occupied by the mortgagors or comortgagors.

(3) In addition to the other requirements contained in his section, in order for a project to be acceptable to the Secretary, at least 51 percent of all family units (i.e., both FHA-insured and conventionally financed units) shall be occupied by the owners or shall have been sold to owners who intend to occupy the units.

(f) *Limitations on conversion of rental housing to condominium use.* With respect to a family unit in any project that was converted from rental housing, no insurance will be provided under this section unless:

(1) The conversion occurred more than one year before the application for insurance; or

(2) The mortgagor or comortgagor was a tenant of a unit in the rental housing project converted to condominium use; or

(3) The conversion of the property is sponsored by a bona fide tenants' organization representing a majority of the households in the project.

(g) *Projects covered by an insured or Secretary-held mortgage.* In addition to the requirements contained in paragraphs (a) through (f) of this section, projects which are covered by an FHA-insured project mortgage, or by a mortgage held by the Secretary, must be in compliance with a conversion plan approved by the Commissioner. The conversion plan shall provide for:

(1) The termination by payment in full of the mortgage or by voluntary termination of the insurance contract covering any HUD/FHA-insured or Secretary-held mortgage on the project, unless the Commissioner determines that the Commissioner's interests, and those of the individuals purchasing the family units, are best served by not requiring the termination of the insurance or payment in full of the mortgage.

(2) On release of a family unit from the project mortgage, payment shall be made on the outstanding balance of the project mortgage in an amount equal to the share of the balance determined by HUD to be attributable to the family unit.

(3) The project mortgage shall certify that, notwithstanding any provisions of the mortgage covering prepayment, no charge is contemplated or has been collected for prepayment in full of the project mortgage.

(h) *Projects not covered by an insured or Secretary-held mortgage.* In addition to the requirements containted in paragraphs (a) through (f) of this section, projects which are not covered by an insured project mortgage or by a Secretary-held mortgage and which have not been approved by the Department of Veterans Affairs for its guaranty, insurance, or direct loan programs shall meet the requirements of this paragraph. Except with the approval of the Commissioner for the purpose of constructing or coverting the project in phases or stages, any special right of the declarant (as declarant and not as a unit owner) to do any or all of the following must have expired or must have been waiver in a recorded instrument:

(1) Add land or units to the condominium;

(2) Convert common elements into additional units or limited common elements;

(3) Withdraw land from the condominium;

(4) Use easements through the common elements for the purpose of making improvements within the condominium or within any adjacent land; or

(5) Convert a unit into two or more units, common elements, or into two or more units and common elements.

[52 FR 33807, Sept. 8 1987, as amended at 54 FR 39525, Sept. 27, 1989]

§ 234.27 Maximum mortgage amounts.

(a) *Occupant mortgagors.* Except for "high-cost" mortgage limits provided for in paragraph (b) of this section, a mortgage executed by a mortgagor who occupies the unit shall not exceed the lesser of the amounts in paragraphs (a)(1) and (a)(2) or (a)(1) and (a)(3) of this section, as follows:

(1) *Dollar limitation.* A dollar limitation of $67,500.

(2) *Loan-to-value limitation—no approval before construction.* In a case where a family unit is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance, unless the family unit—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such family unit had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a family unit is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the family unit does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the family unit exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the family unit as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the family unit as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

(b) *Increased mortgage amount.* For any geographic area in which the Commissioner finds that moderate- and middle-income persons have limited housing opportunities due to high prevailing housing sales prices, the Commissioner may from time to time set mortgage limits that exceed the dollar limitation specified in paragraph (a)(1) of this section to the extent the Commissioner determines to be necessary, by publishing the applicable dollar limitations in a Notice in the FEDERAL REGISTER. The increased dollar limitation may not exceed the lesser of 150 percent of the amount specified in paragraph (a)(1) of this section, or 95 percent of the median one-family house price in the area, as determined by the Commissioner. For purposes of the preceding sentence, the term "area" means a county, or a metropolitan statistical area as established by the Office of Management and Budget, whichever results in the higher dollar amount.

(1)(i) If a party believes that the mortgage limit for any area does not accurately reflect the extent to which moderate- and middle-income persons have limited housing opportunities

due to high prevailing housing sales prices, the party may submit documentation in support of an alternative mortgage limit. For purposes of this paragraph (a)(1)(i), an "area" (A) must at least be the size of a county, whether or not the area is located within a metropolitan statistical area, as established by the Office of Management and Budget; and (B) may be an area for which the mortgage limit contained in paragraph (a)(1) of this section applies.

(ii) The documentation referred to in paragraph (b)(1)(i) of this section must consist of sufficient housing sales price data for the entire geographic area for which the request is made to justify the alternative mortgage limit. The documentation should include a listing of actual sales prices in the area for all or nearly all new and existing one-family homes and condominiums, over a period of time that varies with the sales volume, as follows:

(A) For 500 or more sales per month, a one-month reporting period;

(B) For 250 through 499 sales per month, a two-month reporting period; and

(C) For less than 250 sales per month, a three-month reporting period.

The listing should contain a brief address for each property, its county location, its sale price, the month and year of its sale, and whether it is new or existing.

(iii) In areas where the ratio of existing sales to new sales is three-to-one or greater, an increase in the mortgage limit may be based on 95 percent of the average of the new and the existing median sales prices. In these areas, the documentation referred to in paragraphs (b)(1) (i) and (ii) of this section may also include separate median sales prices for both the new and existing homes.

(2) Requests for alternative mortgage limits, together with supporting documentation, should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

(c) In the case of an area where the Commissioner determines that the median one-family house price does not reasonably reflect the sales prices of newly constructed homes because of an existing stock whose value is static or declining, the Commissioner may give greater weight to the sales prices of new homes in determining median house price in such area. Without limiting the discretion of the Commissioner in fashioning appropriate methods of implementing the foregoing authority in particular circumstances based upon a demonstration of good cause satisfactory to the Commissioner, in areas where evidence satisfactory to the Commissioner indicates that existing home sales outnumber new home sales by three-to-one or better, the "median sales price" will be calculated as the greater of (1) the average of the median sales price for new and existing homes, and (2) the composite median price of all sales.

(d) *Nonoccupant mortgagors.* A nonoccupant mortgagor may not qualify for the 97 percent loan-to-value limitation provided for owner-occupants of property whose appraised value does not exceed $50,000. (See paragraph (a)(3) of this section.) A mortgage executed by an owner who is not the occupant of the property may equal:

(1) The lesser of the amount computed under paragraph (a) of this section or 85 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance; or

(2) The amount computed under paragraph (a) of this section (even if it is greater than 85 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance), if the mortgage covers a unit and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the family unit before the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the family unit is not sold before the due date of the 18th amortization payment of the mortgage to a purchaser, acceptable to the Commissioner, who will occupy the family unit, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

(Approved by the Office of Management and Budget under control number 2502-0302)

[36 FR 24628, Dec. 22, 1971, as amended at 45 FR 3902, Jan. 21, 1980; 47 FR 917, Jan. 7, 1982; 49 FR 14338, Apr. 11, 1984; 49 FR 47389, Dec. 4, 1984; 50 FR 19926, May 13, 1985; 53 FR 8885, Mar. 18, 1988; 54 FR 39525, Sept. 27, 1989]

§ 234.28 Mortgagor's minimum investment.

(a) At the time the mortgage is insured the mortgagor shall have paid on account of the family unit at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

(b) In a case involving a veteran meeting the requirements of § 203.18(b), the minimum investment shall be $200 which may include settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

(c) A mortgagor who is 60 years of age or older as of the date the mortgage is accepted for insurance may borrow from a corporation or person satisfactory to the Commissioner, the payment required by this section, plus settlement costs which may include initial payments for taxes, hazard insurance, mortgage insurance premium and other prepaid expenses, as determined by the Commissioner. As security for the loan, the mortgagor may give a note or other evidence of indebtedness bearing interest at a rate not in excess of that permitted in the insured mortgage. The aggregate amount of the insured mortgage and the loan referred to in this section shall not exceed an amount equal to the Commissioner's estimate of the appraised value of the property, plus an amount equal to the initial payments for taxes, hazard insurance, mortgage insurance premium, and other prepaid expenses, as determined by the Commissioner.

[36 FR 24628, Dec. 22, 1971, as amended at 45 FR 60427, Sept. 12, 1980]

§ 234.29 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

[36 FR 24628, Dec. 22, 1971, as amended at 49 FR 19459, May 8, 1984]

§ 234.36 Amortization provisions.

The mortgage shall contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 234.37 Payment of insurance premiums or charges; prepayment privilege.

(a) *Payment of insurance premiums or charges.* The mortgage shall provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make

future "open-end" advances or is amended or modified to include such a provision, the mortgage shall provide for a monthly payment by the mortgagor of an amount equal to one-twelfth of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgage to prepay the mortgage in whole or in part on any installment due date, but shall not provide for the payment of any charge on account of such prepayment. Prepayments offered or made on other than an installment due date shall be subject to the provisions of § 203.558.

[36 FR 24628, Dec. 22, 1971, as amended at 37 FR 8664, Apr. 29, 1972; 50 FR 25915, June 24, 1985]

§ 234.38 Mortgage provisions for additional payments and covenants.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize any ground or lease rents and the estimated amount of any taxes, special assessments, and such property insurance premiums as may be required by the mortgagee, within a period ending one month prior to the dates on which such charges become delinquent. The mortgage shall further provide that payments and such property insurance premiums as may be required by the mortgagee, shall be held by the mortgagee for the benefit and account of the mortgagor in a manner satisfactory to the Commissioner, for the purpose of paying ground rents, taxes, special assessments, and such property insurance premiums as may be required by the mortgagee, before they become delinquent. The mortgage must also make provision for adjustments in case the estimated amount of taxes, special assessments, and such property insurance premiums as may be required by the mortgagee, shall prove to be more, or less, than the actual amount thereof paid by the mortgagor.

(b) The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expense or assessments and charges by the Association of Owners as provided in the Plan of Condominium Ownership.

(c) As used in the mortgage the term "assessments" except where it refers to assessments and charges by the Association shall be defined to mean "special assessments by state or local governmental agencies, districts or other public taxing or assessing bodies."

[36 FR 24628, Dec. 22, 1971, as amended at 45 FR 60427, Sept. 11, 1980]

§ 234.39 Application of payments.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount of the payment shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the monthly payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance (including insurance charges for open-end advances), ground rents, taxes, special assessments, and such fire and hazard insurance premiums as may be required by the mortgagee;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage; and

(4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

(b) Any deficiency in the amount of the monthly payment, unless made good by the mortgagor on or before the due date of the next monthly payment, shall constitute an event of default under the mortgage.

[50 FR 25915, June 24, 1985]

§ 234.46 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed four percent of the amount of each payment more than 15 days in arrears, to cover servicing and other costs attributable to the receipt of payments from the mortgagors after the date upon which payment is due.

[42 FR 29305, June 8, 1977]

§ 234.47 Mortgagor's payments when mortgage is executed.

(a) The mortgagor must pay to the mortgagee, upon execution of the mortgage, a sum that will be sufficient to pay the ground rents, if any, the estimated taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums for the period beginning on the last date on which each such charge would have been paid under the normal lending practices of the lender and local custom (if each such date constitutes prudent lending practice), and ending on the due date of the first full installment payment under the mortgage, plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment under the mortgage.

(b) The mortgagee may also collect from the mortgagor a sum not exceeding one-sixth of the estimated total amount of such taxes, special assessments, insurance premiums and other charges to be paid during the ensuing 12-month period.

[42 FR 29305, June 8, 1977]

§ 234.48 Charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts.

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater;

(2) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Fees paid to an appraiser or inspector approved by the Commissioner for the appraisal and inspection, if required, of the property.

(vi) Such other reasonable and customary charges as may be authorized by the Commissioner.

(3) Reasonable and customary charges in the nature of discounts.

(b) Before the insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in a form satisfactory to the Commissioner listing any charge, fee or discount collected by the mortgagee from the mortgagor. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(c) Nothing in this section shall be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

[36 FR 24628, Dec. 22, 1971, as amended at 45 FR 30603, May 8, 1980; 47 FR 29525, July 7, 1982; 49 FR 19459, May 8, 1984]

§ 234.49 Eligible mortgages in Alaska, Guam, or Hawaii.

(a) If the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, or if the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart, may be insured without regard to any requirement that the mortgagor:

(1) Be the owner and occupant of the property;

(2) Has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Certify that the mortgaged property be free and clear of all liens other than the mortgage offered for insurance and that there will not be any other unpaid obligations contracted in

connection with the mortgage transaction or the purchase of the mortgaged property.

(b) If the Commissioner finds that, because of higher prevailing costs in Alaska, Guam, or Hawaii, it is not feasible to construct dwellings within the maximum mortgage limits provided in this part without sacrificing sound standards of construction, design, or livability, the Commissioner may increase the principal obligation of mortgages insurable for those areas under this part by publishing in the FEDERAL REGISTER a Notice stating the amounts necessary to compensate for such costs, but not to exceed, in any event, the otherwise applicable maximum (including any high-cost area increases) by more than one-half thereof.

(c) If a party believes that the otherwise applicable mortgage limit needs to be increased to reflect the extent to which high costs make it infeasible to construct dwellings without sacrificing sound standards of construction, design or livability, the party may submit documentation in support of an alternative mortgage limit. This documentation should include actual or estimated costs of such items as design, construction, materials, and labor. In addition, actual sale prices of new homes may be submitted, together with any other documentation requested by the Commissioner. Requests for alternative mortgage limits, together with supporting documentation, should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

(d) Economic soundness shall not be applicable to mortgages covering property located in Alaska or in Guam or in Hawaii, but the Commissioner shall find that the property is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam, or in Hawaii.

(Approved by the Office of Management and Budget under control number 2502-0302)

[36 FR 24628, Dec. 22, 1971, as amended at 49 FR 14339, Apr. 11, 1984]

§ 234.51 Owner-occupancy in military service cases.

Any mortgage otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor be the occupant of the property at the time of insurance, where the Commissioner is satisfied that the inability of the mortgagor to occupy the property is by reason of his entry into military service subsequent to the filing of an application for insurance and the mortgagor expresses an intent (in such form as may be prescribed by the Commissioner), to occupy the property upon his discharge from military service.

§ 234.52 Refinancing of existing mortgages.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage covering a family unit given to refinance an existing mortgage which is insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(a)(1) It must be in an amount that does not exceed the lesser of (i) the original principal amount of the existing mortgage, or (ii) the sum of the unpaid principal balance of the existing mortgage, plus loan closing costs approved by the Commissioner;

(2) In the case of graduated payment mortgages insured under section 234(c) of the Act pursuant to section 245 (a) or (b) of the Act (24 CFR 203.45 or 203.46 (as in effect before its removal at 52 FR 32754, published August 28, 1987)), the refinancing mortgage must have a principal amount that does not exceed the outstanding balance of the existing mortgage.

(b) It must have a term which does not exceed the unexpired term of the existing mortgage, except that in cases where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the insurance fund, taking into consideration the outstanding insurance liability under the existing insured

mortgage, the term may be extended to the lesser of (1) 30 years or (2) the unexpired term of the existing mortgage, plus 12 years;

(c) It must result in a reduction in regular monthly mortgage payments by the mortgagor; in the case of a graduated payment mortgage, this means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed;

(d) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner; and

(e) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

[52 FR 4140, Feb. 10, 1987, and 52 FR 37287, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987, as amended at 53 FR 8885, Mar. 18, 1988]

§ 234.53 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988]

Eligible Mortgagors

§ 234.55 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With the prior approval of the Commissioner, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien, held by a Federal, State, or local governmental agency or instrumentality provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Commissioner.

(c) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(4) The repayment terms shall not provide for a balloon payment before ten years, or for such other term as the Commissioner may approve, except that the mortgage may become due and payable on sale or refinancing of the secured property covered by the insured mortgage; and

(5) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iii) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment. Any full or partial prepayment is not recoverable by the mortgagor if, by application of paragraph (d)(1)(ii) on sale or refinancing of the property, a lesser amount than the amount prepaid would have been due.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduced the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

[45 FR 19223, Mar. 25, 1980, as amended at 50 FR 20907, May 21, 1985]

§ 234.56 Relationship of income to mortgage payments.

(a) A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet (1) the periodic payments required by the mortgage submitted for insurance and (2) other long-term obligations.

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, source of income of the mortgagor or location of the property.

[54 FR 38649, Sept. 20, 1989]

§ 234.57 Credit standing.

A mortgagor shall have a general credit standing satisfactory to the Commissioner.

§ 234.58 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0059)

[54 FR 39695, Sept. 27, 1989]

Eligible Properties

§ 234.63 Location of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 234.1, and not located on Hawaiian home lands. "Hawaiian home lands" means all land given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959.

[52 FR 8070, Mar. 16, 1987, and 52 FR 28470, July 30, 1987]

§ 234.65 Nature of title.

A mortgage, to be eligible for insurance, shall be on a fee interest in, or on a leasehold interest in, a one-family unit in a project including an undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated. To be eligible, a leasehold interest shall be under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

[49 FR 21320, May 21, 1984]

§ 234.67 Rental properties.

No family unit in a project which has been committed to a plan of apartment ownership shall be rented for transient or hotel purposes, as defined in § 234.15, while the family unit is subject to an FHA-insured mortgage.

§ 234.68 Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, construction, or purchase of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of low and moderate income.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 234.69 Eligibility of mortgages covering houses in federally impacted areas.

(a) A mortgage executed in connection with the construction, repair, rehabilitation or purchase of property located near any installation of the Armed Forces of the United States in federally impacted areas shall be eligible for insurance pursuant to this part if the Secretary finds the following additional requirements are met:

(1) The benefits to be derived from such use outweigh the risk of probable cost to the Government; and

(2) The Secretary of Defense certifies that there is no intention to curtail substantially the personnel assigned or to be assigned to such installation.

(b) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 238(c) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

[42 FR 57436, Nov. 2, 1977]

Open-End Advances

§ 234.70 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subchapter or insured after the effective date of this subpart, subject to compliance with the requirements of this section.

(a) The proceeds of any open-end advance shall be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) [Reserved]

(d) The mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final endorsement of the open end advance, together with a sum sufficient to pay the initial insurance charge provided for in Subpart B of this part. No portion of such charges may be included in the principal amount of the open end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance

of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of an advance for insurance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall:

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any advance for insurance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided*, That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of §§ 234.27 and 234.49.

(h) A mortgagee may amend or modify any mortgage form meeting the requirements of § 234.25(a) by adding such provisions as it deems necessary for the purposes of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee shall have the sole responsibility for determining that any mortgage amended by an "open-end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

[36 FR 24628, Dec. 22, 1971, as amended at 45 FR 30603, May 8, 1980; 47 FR 29525, July 17, 1982; 53 FR 34284, Sept. 6, 1988]

§ 234.75 Eligibility of graduated payment mortgages.

A mortgage containing provisions for varying rates of amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(a) The mortgage may provide that any interest which accrues, and which is unpaid pursuant to a financing plan approved by the Secretary, shall be added to the principal obligation of the mortgage.

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(c) The mortgage amount shall not exeed the lesser of:

(1) The limits prescribed in §§ 234.27 and 234.49,

(2) An amount which, when added to all accrued mortgage interest which will be unpaid pursuant to a financing plan approved by the Secretary, shall not exceed 97 percent of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance.

(d) The mortgage must contain complete amortization provisions satisfactory to the Secretary requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Secretary. The sum of the payments to principal and/or interest may increase annually for a period of five years at a rate of 2½ percent, 5 percent or 7½ percent or for a period of ten years at a rate of 2 percent or 3 percent. Any required increase in payments shall occur on the anniversary date of the beginning of amortization. On the termination of the period of annual increases of payments, the sum of the payments to principal and interest in each month shall be substantially the same.

(e) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(f) Sections 234.36 and 234.70 shall not be applicable to this section.

(g) This section shall not apply to a mortgage that meets the requirements of § 234.27(d), or 234.79.

(h) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 245 of the National Housing Act.

[41 FR 42949, Sept. 29, 1976, as amended at 45 FR 56341, Aug. 25, 1980; 49 FR 19454, 19459, May 8, 1984; 49 FR 23585, June 6, 1984]

§ 234.77 Eligiblity of growing equity mortgages.

A mortgage containing provisions for accelerated amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart, subject to compliance with the additional requirements of this section.

(a) The mortgage must contain complete amortization provisions satisfactory to the Secretary, requiring monthly payments by the mortgagor not in excess of the mortgagor's reasonable ability to pay, as determined by the Secretary.

(b) The mortgage must contain a provision setting forth the payments required for principal and interest in each year of the mortgage.

(c) The monthly payments for principal and interest for the initial year or such other initial period as the Commissioner may approve shall be determined on the basis of a 30-year level payment amortization schedule. Subsequent monthly payments for principal and interest may increase annually, biennially or at such other interval, that is greater than one year, as the Commissioner may approve. The subsequent periodic increases may be up to five percent above the payments for principal and interest for the previous period.

(d) No later than at the time that a loan application is offered to a prospective mortgagor, the mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken. The mortgagor shall certify that he or she fully understands the obligation.

(e) The mortgage amount shall not exceed the limits prescribed by § 234.27 or § 234.49.

(f) Sections 234.36 and 234.70 shall not apply to this section.

(g) This section shall not apply to mortgage that meets the requirements of § 234.68 or § 234.79.

(h) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 245(a) of the National Housing Act.

[49 FR 19454, May 8, 1984, as amended at 49 FR 23585, June 6, 1984]

§ 234.79 Eligibility of adjustable rate mortgages.

A mortgage containing provisions for periodic adjustments by the mortgagee in the effective rate of interest charged shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(a) *Interest-rate index.* Changes in the interest rate charged on an adjustable rate mortgage loan must correspond to changes in the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. The weekly average yields are published in the *Federal Reserve Bulletin* and made available by the U.S. Treasury Department in Statistical Release H. 15 (519). Except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward or downward change in the index.

(b) *Amortization provisions.* The mortgage must contain amortization provisions satisfactory to the Secretary, allowing for periodic adjustments in the rate of interest charged corresponding to changes in the interest rate index.

(c) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months or later than 18 months from the date of the mortgagor's first debt service pay-

ment. To set the new interest rate, the mortgagee will determine the change between the initial (i.e., base) index figure and the current index figure, or will add a specified margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(d) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the mortgagor's monthly payments.

(e) *Magnitude of changes.* The adjustable rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the mortgagor. Subsequent adjustments to this interest rate shall correspond to annual changes in the interest rate index subject to the following conditions and limitations:

(1) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index charges in excess by one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(2) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the mortgage interest rate, except that the adjustable rate mortgage may provide for minimum interest rate change limitations and minimum increments of interest rate changes.

(f) *Pre-loan disclosure.* The mortgagee shall explain fully and in writing to the mortgagor, no later than on the date upon which the mortgagee provides the (prospective) mortgagor with a loan application, the nature of the obligation taken. The mortgagor shall certify that he or she fully understands the obligation. Such mortgagee disclosure must include the following items:

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(2) Identification of the interest rate index, its source of publication and availability;

(3) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment;

(4) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(g) *Annual disclosure.* At least 25 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the morgagor of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated.

(h) *Cross-reference.* Sections 234.36 (level payment amortization provisions) and 234.70 (open end advances) shall not apply to this section. This section shall not apply to a mortgage which meets the requirements of §§ 234.27(d) (nonoccupant mortgagors), 234.68 (mortgages covering housing in certain neighborhoods), 234.69 (mortgages covering houses in federally impacted areas), 234.69a (mortgages for individually owned condominium units for existing multifamily housing demonstration), 234.75 (graduated payment mortgages) 234.76 (modified graduated payment mortgages), and 234.77 (growing equity mortgages).

(i) The aggregate number of mortgages insured pursuant to this section and § 203.49 of this chapter in any fiscal year may not exceed 30 percent of the aggregate number of mortgages insured by the Commissioner under title II of the Act during the preceding fiscal year.

(j) *Insurance authority.* Mortgages complying with the requirements of this section shall be insured under this

subpart pursuant to section 251 of the National Housing Act.

[49 FR 23585, June 6, 1984, as amended at 53 FR 8886, Mar. 18, 1988; 54 FR 111, Jan. 4, 1989]

WAIVERS AND AMENDMENT

§ 234.248 Waivers.

The Secretary in any individual case may waive any requirements of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35960, Aug. 18, 1982]

§ 234.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations—Individually Owned Units

§ 234.251 Definitions.

The definitions contained in § 203.251 of this chapter and § 234.1 shall apply to this subpart.

§ 234.255 Cross-reference.

(a) *Provisions.* All of the provisions of §§ 203.251 through 203.436 of this chapter (Part 203, Subpart B) covering mortgages insured under section 203 of the National Housing Act shall apply to mortgages insured under section 234(c) of the National Housing Act except the following provisions:

Sec.
203.259a Scope.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.
203.357 Deed in lieu of foreclosure.
203.378 Property condition.
203.379 Adjustment for damage or neglect.
203.380 Certificate of property condition.
203.389 Waived title objections.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.440 et seq. Insured home improvement loans.

(b) *References.* For the purposes of this subpart, all references in §§ 203.251 through 203.436 of this chapter (Part 203, Subpart B) to section 203 of the Act, one- to four-family, and the Mutual Mortgage Insurance Fund, shall be construed to refer to section 234 of the act, one-family unit, and the General Insurance Fund. The term "property" or "each family dwelling unit" as used in §§ 203.251 through 203.436 of this chapter (Part 203, Subpart B) shall be construed to include "the one-family unit and the undivided interest in the common areas and facilities as may be designated".

[36 FR 24628, Dec. 22, 1971, as amended at 41 FR 42949, Sept. 29, 1976; 42 FR 29305, June 8, 1977; 48 FR 28807, June 23, 1983]

§ 234.259 Claim procedure — graduated payment mortgages.

The provisions of § 203.436 of this part are applicable to mortgages insured under the provisions of § 234.75.

[41 FR 42949, Sept. 29, 1976]

§ 234.260 Assignment of mortgage and certificate by mortgagee.

In addition to the requirements of §§ 203.350 through 203.353 incorporated by reference, the mortgagee shall certify as to any changes in the plan of apartment ownership including the

administration of the property. Any changes shall require FHA approval.

[36 FR 24628, Dec. 21, 1971, as amended at 42 FR 29305, June 8, 1977]

§ 234.262 Exception to deed in lieu of foreclosure.

All of the provisions of § 203.357 of this chapter relating to acceptance of a deed in lieu of foreclosure shall apply to mortgages insured under this part only if the mortgagee establishes to the satisfaction of the Commissioner that there are no unpaid assessments owed the Association or Cooperative of Owners.

§ 234.265 Contents of deed and supporting documents.

In addition to the requirements of § 203.367, incorporated by reference, the deed shall comply with the plan of apartment ownership. Any changes therein, including the administration of the property, shall require FHA approval.

§ 234.270 Condition of the multifamily structure.

(a) When a family unit is conveyed or a mortgage is assigned to the Commissioner, the family unit and the common areas and facilities designated for the particular unit shall be undamaged by fire, flood, earthquake, tornado, or boiler explosion, or, as to mortgages insured on or after January 1, 1977, due to failure of the mortgagee to take action as required by § 203.377. If the property has been damaged, either of the following actions shall be taken:

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Commissioner.

(2) If the prior approval of the Commissioner is obtained, the damaged property may be conveyed or the mortgage assigned to the Secretary without repairing the damage. In such instances, the Commissioner shall deduct from the insurance benefits either his estimate of the decrease in value of the family unit or the amount of any insurance recovery received by the mortgagee, whichever is the greater.

(b) If the property has been damaged by fire and such property was not covered by fire insurance at the time of the damage, the mortgagee may convey the property or assign the mortgage to the Commissioner without deduction from the insurance benefits for any loss occasioned by such fire if the following conditions are met:

(1) The property shall have been covered by fire insurance at the time the mortgage was insured.

(2) The fire insurance shall have been later cancelled or renewal shall have been refused by the insuring company.

(3) The mortgagee shall have notified the Commissioner within 30 days (or within such further time as the Commissioner may approve) of the cancellation of the fire insurance or of the refusal of the insuring company to renew the fire insurance. This notification shall have been accompanied by a certification of the mortgagee that diligent efforts were made, but it was unable to obtain fire insurance coverage at reasonably competitive rates and that it will continue its efforts to obtain adequate fire insurance coverage at competitive rates, including coverage under the FAIR Plan. A "reasonable rate" is a rate not more than 25 percent in excess of the rate or the advisory rate filed or used by the principal rating organization doing business in the state. If the property is located in a state which has no rate or advisory rate as provided in the preceding sentence, the mortgagee shall consult the Director of the local HUD office as to a reasonable rate. When hazard insurance coverage cannot be obtained in an amount equal to the unpaid principal balance of the loan but insurance can be obtained in a reduced amount from a FAIR Plan or another insurance carrier, the Secretary will accept the reduced coverage without reduction of mortgage, insurance benefits, if the rates do not exceed the guidelines stated herein. If coverage in any amount is only available at rates in excess of a reasonable rate as defined herein, the mortgagor may but shall not be required to purchase such coverage. If coverage is purchased, the amount of any claim

for insurance benefits under this part shall be reduced by the amount of any recovery of hazard insurance benefits by the mortgagee.

(c) The provisions in paragraph (b) of this section shall be applicable with respect to the insurance of all mortgages whether insured prior to May 8, 1968, or insured on or after such date.

(d) The mortgagee shall not be liable for damage to the property by waste in connection with mortgage insurance claims paid on or after July 2, 1968. However, the mortgagee shall be responsible for damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377, as to all mortgages insured on or after June 8, 1977, but such responsibility shall not exceed the amount of its insurance claim as to a particular property.

[36 FR 24628, Dec. 22, 1971, as amended at 42 FR 29305, June 8, 1977]

§ 234.273 Assessment of taxes.

When a family unit is conveyed to the Commissioner or a mortgage is assigned to the Commissioner, the unit shall be assessed and subject to assessment for taxes pertaining only to that unit.

§ 234.274 Certificate of tax assessment.

The mortgagee shall certify, as of the date of filing for record of the deed or assignment of the mortgage to the Commissioner, that the family unit is assessed and subject to assessment for taxes pertaining only to that unit.

§ 234.275 Certificate or statement of condition.

The mortgagee shall either certify that as of the date of the filing of deed for record, or assignment of the mortgage to the Secretary, the property was (a) undamaged by fire, flood, earthquake, tornado or boiler explosion, and (b) as to mortgages insured or for which commitments to insure are issued on or after June 8, 1977, undamaged due to failure of the mortgagee to take action as required by § 203.377, or its claim shall be accompanied by a statement describing any such damage that may still exist together with a copy of the Secretary's authorization to convey the property in damaged condition. In the absence of evidence to the contrary, the mortgagee's certificate or its statement as to damage shall be accepted by the Secretary as establishing the condition of the family unit and the common areas and facilities designated for the particular unit.

[42 FR 29305, June 8, 1977]

§ 234.280 Cancellation of hazard insurance.

The provisions of § 203.382 incorporated by reference shall apply to hazard insurance policies carried solely for the family unit.

§ 234.285 Waived title objections.

The Commissioner shall not object to title by reason of the following matters:

(a) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(b) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(c) Encroachment on the subject property by improvements on adjoining property, provided such encroachments do not interfere with the use of any improvements on the subject property.

(d) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property.

(e) Customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

(f) Federal tax liens and rights of redemption arising therefrom if the following conditions are observed. If the mortgagee acquires the property by

foreclosure the mortgagee shall give notice to the Internal Revenue Service (IRS) of the foreclosure action. The Commissioner will not object to an outstanding right of redemption in IRS if: (1) The Federal tax lien was perfected subsequent to the date of the mortgage lien, and (2) the mortgagee has bid an amount sufficient to make the mortgagee whole if the property is in fact redeemed by the IRS.

[36 FR 24628, Dec. 22, 1971, as amended at 42 FR 29305, June 8, 1977]

Subpart C—Eligibility Requirements—Projects—Conversion Individual Sales Units

§ 234.501 Cross-reference.

(a) All of the provisions of Subpart A, Part 207 of this chapter concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act apply to blanket mortgages on condominium projects insured under section 234 of the National Housing Act except the following provisions:

Sec.
207.1 Application, SAMA letter, commitments and required fees.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.14 Prepayment privilege; prepayment and late charges.
207.15 Issuance of bonds secured by trust indenture.
207.19 Required supervision of private mortgagors.
207.20 Occupancy requirements.
207.23 Eligibility of property.
207.24 Development of property.
207.31 Eligibility of miscellaneous type mortgages.
207.32 Eligibility of refinancing transactions.
207.32a Eligibility of mortgages on existing projects.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to blanket mortgages insured under section 234 of the Act.

[36 FR 24628, Dec. 22, 1971, as amended at 39 FR 12005, Apr. 2, 1974; 40 FR 10177, Mar. 5, 1975]

§ 234.505 Definitions.

As used in this subpart, the following terms shall have the meaning indicated.

(a) "Act" means the National Housing Act as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) "Insured mortgage" means a mortgage insured by the endorsement of the credit instrument by the Commissioner.

(d) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(e) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the loan.

(f) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(g) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(h) "Replacement cost" is the cost, as estimated by the Commissioner, of the property or project when the proposed improvements are completed. It may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and such other items of cost as approved by the Commissioner.

(i) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of

the Pacific Islands, American Samoa, and the Virgin Islands.

[36 FR 24628, Dec. 22, 1971, as amended at 49 FR 12698, Mar. 30, 1984]

§ 234.506 Application filing and approved fees.

All of the provisions of § 207.1 of this chapter relating to the filing of an application for insurance and the fees to be paid to the Commissioner apply to cases involving mortgages to be insured under this subpart, except:

(a) In all cases the combined application, commitment, and inspection fees shall aggregate no less than the following amounts:

(1) $50 per dwelling unit, in a case involving new construction,

(2) $40 per dwelling unit, in a case involving rehabilitation, and

(b) The reference in § 207.1(b)(1)(iii) to "rents" and "rent" shall be changed to "sales prices" and "sales price" respectively.

[39 FR 12005, Apr. 2, 1974]

§ 234.510 Certification by mortgagee.

The application for insurance shall be accompanied by a certification from the mortgagee that the law of the jurisdiction will permit the project to be converted to a plan of apartment ownership which will meet the requirements of this part.

§ 234.515 Certification by mortgagor.

The application for insurance shall be accompanied by a certification from the mortgagor that it intends, upon completion of the project, to commit the ownership of the project to a plan of apartment ownership under which each family unit in the project will be eligible for individual mortgage insurance under section 234(c) of the Act. The mortgagor shall further certify that it intends faithfully and diligently to make all reasonable effort to establish the plan of apartment ownership and to sell the family units to purchasers approved by the Commissioner.

§ 234.520 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 234.505. The mortgage shall be:

(1) On real estate held in fee simple; or

(2) On the interest of the lessee in real estate held under a lease having one of the following terms:

(i) A period of not less than 95 years and which is renewable.

(ii) A period of not less than 10 years to run beyond the maturity date of the mortgage.

(b) Leases shall contain provisions permitting the conversion of the project to an FHA approved plan of apartment ownership.

(c) The project shall consist of not less than four dwelling units which may be detached, semidetached, or row house, or multifamily structures.

[36 FR 24628, Dec. 22, 1971, as amended at 50 FR 4647, Feb. 1, 1985; 52 FR 37289, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987]

§ 234.525 Maximum mortgage amounts—new construction.

The mortgage may involve a principal obligation not in excess of the lowest of the following limitations:

(a) *Loan-to-value limitation.* 90 percent of the Commissioner's estimate of replacement cost of the project.

(b) *Family unit limitation.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(1) $28,032 without a bedroom.

(2) $32,321 with one bedroom.

(3) $38,979 with two bedrooms.

(4) $49,893 with three bedrooms.

(5) $55,583 with four or more bedrooms.

(c) *Individual unit limitation.* An amount equal to the sum of the unit mortgage amounts determined under the provisions of section 234(c) of the Act, assuming the mortgagor to be the owner and occupant of each family unit.

[36 FR 24628, Dec. 22, 1971, as amended at 39 FR 32436, Sept. 6, 1974; 41 FR 41881, Sept. 23, 1976; 53 FR 8886, Mar. 18, 1988]

§ 234.530 Increased mortgage amounts.

(a) *Elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit, as provided in § 234.525(b), to not to exceed:

(1) $29,500 without a bedroom.

(2) $33,816 with one bedroom.

(3) $41,120 with two bedrooms.

(4) $53,195 with three bedrooms.

(5) $58,392 with four or more bedrooms.

(b) *High-cost areas.* (1) The Commissioner may increase the dollar amount limitations in § 234.525(b) and in paragraph (a) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii, it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design and livability within the limitations of maximum mortgage amounts provided in this part, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed, in any event, the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

[36 FR 24628, Dec. 22, 1971, as amended at 39 FR 32437, Sept. 6, 1974; 41 FR 41881, Sept. 23, 1976; 48 FR 16669, Apr. 19, 1983; 53 FR 8886, Mar. 18, 1988]

§ 234.531 Loans to cover 2 year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 207.7 of this chapter on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 234.535 Adjusted mortgage amount—rehabilitation projects.

In addition to the maximum mortgage amount limitations of §§ 234.525 and 234.530, a mortgage having a principal amount computed in compliance with the applicable provisions of this subpart, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation.

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebted-

ness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed the sum of:

(1) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(2) Such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of the sum of:

(1) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(2) The actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

§ 234.540 Reduced mortgage amount—leaseholds.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

[41 FR 11287, Mar. 18, 1976]

§ 234.545 Prepayment privilege and prepayment charges.

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving to the mortgagee 30 days notice in writing in advance of its intention to prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any prepayment charge. No prepayment charge shall be collected if prepayment results from either of the following:

(1) A payment requirement of the Commissioner.

(2) Prepayment of the project mortgage as part of a plan for committing the ownership of the project to family unit ownership.

§ 234.550 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed two cents for each dollar of each payment to interest and principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 234.555 Zoning, deed or building restrictions.

The project when constructed or rehabilitated shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations.

§ 234.560 Supervision by Commissioner.

(a) *In general.* All of the provisions of § 207.19 of this chapter relating to requirements incident to insurance of advances as well as those concerning labor standards and prevailing wage requirements, apply to mortgages executed by eligible mortgagors under this subpart but paragraphs (a), (b), (e), (f), (g) and (h) of such § 207.19 do not apply.

(b) *Type of supervision.* The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 234.565 Occupancy requirements.

(a) *Family with children.* The mortgagor shall certify under oath to the Commissioner that:

(1) In selecting tenants for the project, or in selling family units under the plan for apartment ownership, the mortgagor will not discriminate against any family because it includes children.

(2) The mortgagor will not sell the project while the mortgage insurance is in effect, unless the purchaser makes the certification required in paragraph (a)(1) of this section.

(b) *Transient or hotel purposes.* The mortgagor shall certify under oath to the Commissioner that, so long as the mortgage is insured by the Commissioner, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service.

§ 234.570 Advance amortization requirements.

If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result of the operation of the project, such net income, to the extent determined by the Commissioner, shall be deposited in an escrow account pursuant to an agreement approved by the Commissioner. The agreement shall provide that disbursement shall be made only as directed by the Commissioner.

Subpart D—Contract Rights and Obligations—Projects

§ 234.751 Cross-reference.

(a) All of the provisions, except § 207.258(b) of Subpart B of this chapter, covering mortgages insured under section 207 of the National Housing Act shall apply to mortgages insured under section 234(d) of such Act.

(b) For the purposes of this subpart, all references in Part 207 of this chapter to section 207 of the National Housing Act shall be construed to refer to section 234(d) of the act.

[36 FR 24628, Dec. 22, 1971, as amended at 50 FR 38787, Sept.25, 1985]

Subpart E—Servicing Responsibilities—Individually Owned Units

§ 234.800 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 234(c) of the National Housing Act.

[42 FR 29306, June 8, 1977]

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

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AUTHORITY: Secs. 211 and 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535 (d)).

Subpart A—Eligibility Requirements—Homes for Lower Income Families

SOURCE: 41 FR 1172, Jan. 6, 1976, unless otherwise noted.

§ 235.1 Cross-reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings

under section 203 of the National Housing Act apply to mortgages insured under section 235(i) of the National Housing Act, except the following provisions:

Sec.
203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes.
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.20 Agreed interest rate.
203.25 Late charge.
203.28 Economic soundness of project.
203.29 Eligible mortgages in Alaska, Guam or Hawaii.
203.32 Mortgage lien.
203.33 Relationship of income to mortgage payments.
203.35 Disclosure and verification of Social Security and Employer Identification Numbers.
203.36 Certificate and contract regarding use of dwelling for transient or hotel purposes.
203.38 Location of dwelling.
203.42 Rental properties.
203.43 Eligibility of miscellaneous type mortgages.
203.43i Eligibility of mortgages on Hawaiian home lands pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.44 Eligibility of open-end advances.
203.45 Eligibility of graduated payment mortgages.
203.46 Eligibility of modified graduated payment mortgages.
203.47 Eligibility of growing equity mortgages.
203.49 Eligibility of adjustable rates mortgages.
203.50 Eligibility of rehabilitation loans.
203.51 Negotiated interest rate.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 235 of the Act.

[41 FR 1172, Jan. 6, 1976, as amended at 41 FR 52949, Sept. 26, 1976; 44 FR 46836, Aug. 9, 1979; 45 FR 76401, Nov. 18, 1980; 47 FR 16779, Apr. 20, 1982; 49 FR 19454, 19459, May 8, 1984; 49 FR 23586, June 6, 1984; 50 FR 20908, May 21, 1985; 52 FR 8070, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988; 54 FR 39695, Sept. 27, 1989]

§ 235.2 Basic program outline.

This part authorizes assistance to aid lower income families to acquire homeownership. After January 5, 1976, that assistance shall be granted only under Subparts A, B and C in accordance with the following basic conditions as further described in those subparts.

(a) Assistance will be in the form of monthly payments by the Secretary to the mortgagee to reduce effective interest costs to a homeowner on an insured market rate home mortgage to as low as four percent if the homeowner cannot afford the full mortgage payment with 20 percent of his income.

(b) The amount of subsidy will vary according to the income of each homeowner and the total amount of the mortgage payment at the market rate of interest. Family income and mortgage limits are established for eligibility in each locality.

(c) Assistance will be limited to mortgagors who purchase for occupancy new or substantially rehabilitated single family or condominium units.

(d) The mortgagor must have paid in cash or its equivalent at least 3 percent of the acquisition cost.

(e) In making assistance available, the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced from their present dwelling unit.

[41 FR 1172, Jan. 6, 1976, as amended at 44 FR 25837, May 3, 1979; 45 FR 62796, Sept. 22, 1980; 51 FR 11218, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988]

§ 235.3 Waivers.

The Secretary in any individual case may waive any requirement of Subparts A and C of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Com-

missioner, but shall not be redelegated.

[47 FR 35960, Aug. 18, 1982]

§ 235.5 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Adjusted annual income" means the annual family income remaining after making certain exclusions from gross annual income. The following items shall be excluded, in the order listed, from family gross annual income:

(1) 5 percent of such gross annual income, in lieu of amounts to be withheld (social security, retirement, health insurance, etc.) regardless of the actual amount of such withholdings;

(2) Any unusual income or temporary income, such as overtime pay which will be discontinued, income of a secondary wage earner which will terminate, unemployment compensation which does not occur regularly, or other income of a temporary nature which will be or has been discontinued.

(3) The earnings of each minor in the family who is living with such family, plus the sum of $300 for each such minor.

(b) [Reserved]

(c) "Family" means: (1) Two or more persons related by blood, marriage, or operation of law, who occupy the same unit;

(2) A handicapped person who has a physical impairment which is expected to be of a continued duration and which impedes his ability to live independently unless suitable housing is available; or

(3) A single person, 62 years of age or older.

(d) "Gross annual income" means the total income, before taxes and other deductions, received by all members of the mortgagor's household. There shall be included in this total income all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments, and such other income items as the Secretary considers appropriate.

(e) "Minor" means a person under the age of 21. As used in this subpart, minor shall not include a mortgagor or his or her spouse.

(f) "Substantial rehabilitation" means the improvement of a unit in substandard condition to a decent, safe and sanitary level, meeting FHA's standards for mortgage insurance. Units are in substandard condition when, while they may be structurally sound, they do not provide safe and adequate shelter, and in their present condition endanger the health, safety, or well-being of the occupants. Such housing has one or more defects, or a combination of potential defects in sufficient number or extent to require considerable repair or rebuilding, or is of inadequate original construction. The defects are either so critical or so widespread that the structure should be extensively repaired. The estimated cost of the rehabilitation should normally not be less than 25 percent of the value of the property (including land) after rehabilitation. The rehabilitation should be of such scope that, when completed, all the components in the house are operable and should not be anticipated to require any work or major expense over and above normal maintenance for the first one-fourth to one-third of the mortgage term.

[41 FR 1172, Jan. 6, 1976, as amended at 43 FR 60156, Dec. 26, 1978; 45 FR 62796, Sept. 22, 1980; 46 FR 56422, Nov. 17, 1981; 51 FR 11218, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988]

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum with respect to mortgages insured on or after February 23, 1990.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the date of each installment.

[49 FR 11624, Mar. 27, 1984, as amended at 55 FR 9724, Mar. 15, 1990]

§ 235.10 Eligible mortgagors.

(a) To be eligible under this subpart, the mortgagor shall have an adjusted annual income which shall not exceed

at the time of initial occupancy 95 percent of the median income for the area, with adjustments for smaller and larger families, as determined by the Secretary, except that the Secretary may establish income ceilings which are higher, based upon the Secretary's determination that such higher ceilings are necessary because of prevailing levels of construction costs, unusually low median family incomes or such other factors as the Secretary may deem to be necessary to carry out the purposes of this part. The percentage of median income for smaller and larger families shall be as follows:

Persons per family	Percent of median family income
1	67
2	76
3	85
4	95
5	101
6	107
7	113
8 or more	119

(b) In addition to the income limitations set forth in paragraph (a) of this section, a mortgagor must establish that his income is and will be adequate to meet his portion of the periodic payments required in the mortgage submitted for insurance. Only that part of the mortgagor's income which can be expected to continue for approximately the first five years of the mortgage term will be considered effective income for the purpose of determining the adequacy of the mortgagor's income.

(c) The mortgagor shall agree to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income whenever one of the following events takes place:

(1) Annually, no earlier than 60 days before and no later than 30 days after the anniversary date of the mortgage or at such other anniversary date as set by the Secretary;

(2) No more than 30 days after;

(i) The mortgagor or any adult (21 years or older) member of the family residing in the household changes or begins employment which results in an increase in the family income reported in the original application for assistance or the most recent recertification.

(ii) The family income (except earnings of minors) increases at least $50 per month.

(3) At such other times as the Secretary may require.

(d) Assistance payments may be used to assist a family owning a standard home to purchase a new home, but a family already owning a home must sell its present property and may not rent that property out to another and occupy the subsidized unit.

(e) To be eligible under this part, the mortgagor or cooperative member must meet the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0267, 2502-0268, and 2577-0083)

[41 FR 1172, Jan. 6, 1976, as amended at 41 FR 51011, Nov. 19, 1976; 43 FR 60156, Dec. 26, 1978; 46 FR 56422, Nov. 17, 1981; 51 FR 11218, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 54 FR 39695, Sept. 27, 1989]

§ 235.11 Homeownership counseling.

The Secretary will make available a counseling information package to mortgagees, reservation recipients and sellers participating in this program, who will be required to distribute the package to potential purchasers. Material will include information on home purchase procedures, property maintenance, and other homeownership responsibilities. A certification by the reservation recipient, seller or mortgagee that the prospective homeowner has received the counseling information package must accompany each application for a firm commitment. In addition, some field office jurisdictions are served by HUD approved agencies offering counseling. Where such counseling is available and if the applicant has never owned a home, or where in the opinion of the Secretary the applicant will benefit from counseling, successful completion of homeownership counseling may be required before the Secretary will endorse the loan.

§ 235.12 Recapture of assistance payments.

(a) With respect to any mortgage insured under this part pursuant to a firm commitment issued on or after May 27, 1981, the mortgagor shall repay to the Secretary any assistance received under this part in the amount provided in paragraph (b) of this section when the mortgagor:

(1) Disposes of the property or a homeowner not qualified to receive assistance payments, or

(2) Has rented the property (or rented the owner's unit in the case of a two- to four-family property) for more than one year, or

(3) Requests a release of the Secretary's lien on the property.

(b) The amount of assistance to be repaid by the mortgagor shall be the lesser of the amount of assistance actually received under this part (other than handling charges) or 50 percent of the net appreciation of the property.

(c) The term "net appreciation of the property" as used in this section means any increase in the value of the property over the purchase price, as of the time the mortgage is accepted for insurance, less the reasonable costs of sale and the reasonable costs of improvements made to the property.

(d) The mortgagor shall execute such documents as the Secretary shall require to assure repayment to the Secretary of the amounts provided in this paragraph.

[48 FR 40714, Sept. 19, 1983]

§ 235.15 Eligible types of dwellings.

(a) The mortgage shall involve one of the following types of dwellings:

(1) A single family dwelling concerning which the application for insurance is approved by the Secretary prior to the beginning of construction or prior to the beginning of rehabilitation.

(2) A single family dwelling which has never been previously occupied and is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction.

(3) A one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multifamily project, the construction or substantial rehabilitation of which shall have been completed not more than two years prior to the filing of the application for assistance payments under Subpart C of this part. The family unit shall have had no previous occupant other than the mortgagor.

(4) A single family dwelling or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project), the construction of which shall have been completed at least one year prior to the filing of the application for assistance payments under Subpart C of this part and which meets such standards as the Secretary may prescribe, provided that the property is to be occupied by a mortgagor who, without such assistance, would be likely to be involuntarily displaced from the dwelling or, in the case of a condominium, from a unit in the project. Provided, That any family (i) which, by virtue of threatened displacement from a unit in a project, would be eligible for assistance under this provision for a one-family unit in the resulting condominium project, and (ii) which is precluded from the purchase of such condominium unit because of a rule of the condominium association, may be entitled to assistance under this section in connection with a single family dwelling or a one-family unit in another condominium (together with an undivided interest in the common areas and facilities serving the project), which otherwise meets the standards of this section and which is located in the same market area as the converted project.

(5) A substantially rehabilitated single family dwelling that is security for a mortgage which was endorsed for mortgage insurance under § 203.50 not more than twelve months prior to the application for a firm commitment.

(b) The marketability of all lots or units to be developed or rehabilitated must be established.

[48 FR 13413, Mar. 31, 1983]

§ 235.16 Value of property after rehabilitation.

Value after rehabilitation will be based upon the market data approach utilizing similarly rehabilitated property sales data. The value of a rehabilitated property will be the lesser of the following:

(a) Value before rehabilitation ("as is") plus the cost of rehabilitation.

(b) Acquisition cost plus the cost of rehabilitation.

(c) Market value after rehabilitation.

A property rehabilitated and offered as security for a subsidized mortgage must be fully marketable in the neighborhood (either currently or after the completion of neighborhood improvements) without the benefit of the subsidy.

[41 FR 1172, Jan. 6, 1976, as amended at 41 FR 3470, Jan. 23, 1976]

§ 235.18 Lot size.

Homeownership assistance payments may not be used to permit acquisition of land in excess of requirements for an adequate residential site, even though the cost of land may be cheaper in outlying areas. Accordingly, lots for use under the program authorized by this part shall not exceed one acre unless more than one acre is needed to comply with local code requirements or to provide for a safe and adequate water supply and sewage disposal system.

§ 235.20 Requirements for family unit in condominium.

Where the dwelling involved is a one-family unit in a condominium project, the following additional requirements shall be met:

(a) Family unit eligibility. The family unit must be located in a project which has been financed with a mortgage which is or has been insured under any of the FHA-multifamily housing programs other than sections 213(a) (1) and (2) of the National Housing Act: *Provided*, That, this FHA mortgage financing rules does not apply to projects involving 11 or less units nor to existing public housing units concerning which there has been established a condominium which meets such standards as the Secretary may prescribe and for which the mortgagor qualifies as a family occupying low-rent public housing nor to units identified in § 235.15(a)(4).

(b) Plan of apartment ownership. The project in which the family unit is located shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Secretary and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(c) Certificate by mortgagee. The mortgagee shall certify as to each of the following:

(1) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(2) That the mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(3) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(d) FHA controls for consumer and public interest. The Secretary may require the execution of a regulatory agreement which shall be made applicable to any association of owners and to any subsequent owner of a family unit. The Secretary may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(e) *Mortgage covenant concerning common expenses and assessments.* The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

(f) Definition of term "assessment". As used in the mortgage, the term "assessment", except where it refers to assessments and charges by the Association of Owners, shall mean special assessments by State or local govern-

mental agencies, districts or other public taxing or assessing bodies.

[41 FR 1172, Jan. 6, 1976, as amended at 45 FR 62796, Sept. 22, 1980; 53 FR 34284, Sept. 6, 1988]

§ 235.22 Mortgage provisions.

(a) *Mortgage form.* (1) The term "mortgage" as used in this part has the same meaning as defined in either § 203.17(a)(1) of this chapter, § 203.43c(b)(1) of this chapter, or § 234.1(d) of this chapter, as applicable, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trusts," "security deed" or other term common in a jurisdiction, as well as the credit instrument, or note, secured thereby.

(2) The mortgage shall be in a form meeting the requirements of the Commissioner. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in multiples of $50.

(c) *Payments.* The mortgage shall:

(1) Come due on the first of the month.

(2) Contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

(d) *Maturity.* The mortgage shall provide for complete amortization not to exceed 30 years from the date of the beginning of amortization of the mortgage.

(e) *Property standards.* The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

(f) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

[41 FR 1172, Jan. 6, 1976, as amended at 45 FR 29278, May 2, 1980; 48 FR 12085, Mar. 23, 1983; 49 FR 21320, May 21, 1984; 53 FR 34284, Sept. 6, 1988]

§ 235.25 Maximum mortgage amount.

(a) With respect to mortgages insured pursuant to conditional commitments issued or preliminary reservations approved before July 13, 1981, the mortgage shall not exceed the following:

(1) $32,000 for a single-family dwelling or a one-family unit in a condominium project, or

(2) $38,000 where a family of five or more persons requires a minimum of four bedrooms and it is found that adequate housing within the basic mortgage limits of paragraph (a)(1) of this section is not available in the area. The property must contain four or more bedrooms complying with applicable HUD/FHA standards for bedrooms. Partially finished attic or basement space, large closets and other enclosed areas shall not be counted as bedrooms. In addition, the property must meet other applicable underwriting standards.

(b) With respect to mortgages insured pursuant to conditional commitments issued or preliminary reservations approved on or after July 13, 1981, the mortgage shall not exceed the following:

(1) $40,000 for a single-family dwelling or a one-family unit in a condominium project, or

(2) $47,500 in the case of a family with five or more persons where the conditions set forth in paragraph (a)(2) of this section are met.

[46 FR 29259, June 1, 1981; 46 FR 31257, June 15, 1981]

§ 235.30 Increased maximum mortgage amount—high cost areas.

(a) With respect to mortgages insured pursuant to conditional commitments issued or preliminary reservations approved before July 13, 1981, located in any geographical area where

the Secretary finds cost levels so require, the Secretary may increase the dollar amount limitations set forth in § 235.25(a) to an amount not to exceed the following:

(1) $38,000 for a single-family dwelling or a one-family unit in a condominium project, or

(2) $44,000 in the case of a family with five or more persons where the conditions set forth in § 235.25(a)(2) are met.

(b) With respect to mortgages insured pursuant to conditional commitments issued or preliminary reservations approved on or after July 13, 1981, located in any geographical area where the Secretary finds cost levels so require, the Secretary may increase the dollar amount limitations set forth in § 235.25(b) to an amount not to exceed the following:

(1) $47,500 for a single-family dwelling or a one-family unit in a condominium project, or

(2) $55,000 in the case of a family with five or more persons where the conditions set forth in § 235.25(a)(2) are met.

[46 FR 29259, June 1, 1981]

§ 235.31 Eligible mortgages in Alaska, Guam, or Hawaii.

(a) If the Commissioner finds that because of high costs in Alaska, Guam or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and liveability within the limitations of maximum mortgage amounts provided in this subpart the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed, in any event, the maximum including high cost area increases, if any, otherwise applicable by more than one-half thereof.

[41 FR 11484, Mar. 19, 1976]

§ 235.32 Increased maximum mortgage amount for physically handicapped persons.

If the mortgate relates to a dwelling to be occupied by a handicapped person as defined in § 235.5(c)(2), the dollar amount limitation under § 235.25 or § 235.30 may be increased in such amount as may be necessary to reflect the cost of making the dwelling accessible to and usable by such person, but not to exceed 10 percent of such limitation.

[49 FR 21320, May 21, 1984]

§ 235.33 Mortgage lien.

(a) Except as provided in paragraph (b) of this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage made or insured, or other secondary lien held, by a Federal, State or local governmental agency or instrumentality. However, the required monthly payments under the insured mortgage and the second mortgage or lien shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner.

[50 FR 20908, May 21, 1985; 50 FR 26696, June 28, 1985]

§ 235.35 Mortgagor's investment.

(a) [Reserved]

(b) The mortgagor shall have paid, at the time the mortgage is insured, on account of the property, in cash or its equivalent, at least 3 percent of the Secretary's estimate of the cost of acquisition.

(c) The mortgagor may make a larger investment than required under paragraph (b) of this section to reduce the mortgage amount or to purchase a property on which the estimate of value and selling price do not exceed the limits specified in § 235.320.

(d) A purchaser can contribute the full value of his labor toward the required downpayment, or to reduce the mortgage, or both, if arrangements are made with the builder according to

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procedures prescribed by the Secretary. If a purchaser owns the lot on which the dwelling is to be built, an amount equivalent to his equity in the lot based on the FHA appraised value (or actual purchase price if acquired within the past six months), less any indebtedness against the property, may be applied toward the required downpayment, or to reduce the mortgage, or both.

[41 FR 1172, Jan. 6, 1976, as amended at 42 FR 22557, May 4, 1977; 44 FR 25837, May 3, 1979]

§ 235.37 Limitation on concentration of units in a subdivision.

No mortgage shall be insured on a unit in a subdivision which when added to any other mortgages insured under this section in the subdivision after October 12, 1977, represents more than 40 percentum of the total number of units in the subdivision, except that the preceding limitation shall not apply with regard to any rehabilitated unit, or to any unit or subdivision located or to be located in an established urban neighborhood or area, where a sound proposal is involved and where an aggregation of subsidized units is essential to a community sponsored overall redevelopment plan, as determined by the Secretary.

[42 FR 57436, Nov. 2, 1977]

§ 235.38 Reservations of contract authority.

(a) The Secretary will not issue conditional commitments to insure mortgages and to make interest reduction payments pursuant to this part. However, conditional commitments to insure mortgages issued under Part 203, Part 221, Subpart A, and Part 234, Subpart A of this chapter will be considered to be conditional commitments to insure under this part upon request by the mortgagee accompanied by submission of an application for firm commitment to insure under this part for an eligible mortgagor subject to the availability of contract authority for interest reduction payments under Subpart C of this part and subject to any limitations on eligibility set forth in this subpart.

(b) Preliminary reservations of contract authority may be issued by the Secretary to a builder or seller specifically identified for use in connection with commitments or a group of commitments for insurance of mortgages in a particular subdivision or project subject to the limitations in § 235.37 or for a specific home not in a subdivision. A builder or seller who wants to be certain that funds will be available to assist buyers should submit a request to the Secretary for a preliminary reservation of contract authority. If contract authority is available, it will be reserved if the project in which the units will be located, meets project selection, affirmative marketing, environmental, underwriting, feasibility and other applicable requirements. A preliminary reservation is an advance commitment that contract authority will be available for assistance payments when homes are sold to families who qualify for assistance. Except as provided in this paragraph (b), there is no requirement that builders or sellers obtain preliminary reservations, but if a preliminary reservation is not requested there is no assurance that assistance funds will be available when completed units are to be sold to eligible families.

(c) Builders or developers of subdivisions, condominiums or substantial rehabilitation projects involving 13 or more subsidized units must apply for preliminary reservations. Application for preliminary reservations may be made as early as the developer desires but not before filing of the request for subdivision approval or other appropriate application. Builders or developers of smaller (12 or less units) subdivisions, may also apply for preliminary reservations.

(d) If a request for a preliminary reservation is approved, either for the amount requested or for an amount determined by the Secretary, the Secretary will reserve the contract authority. The reservation is a commitment by the Government that the contract authority for the transaction has been reserved.

(e) A preliminary reservation will expire six months after the date of issue. If construction has started the reservation may be extended for one

additional six month period. Preliminary reservations will also expire if the conditional commitment for mortgage insurance with which the reservations are connected expires will expire on the date of the firm commitment if the mortgage has not yet been insured under this part.

(f) Builders and developers not required to apply in accordance with paragraph (c) of this section, may apply for Section 235 assistance through applications under this part for convertible conditional commitments for new construction or substantial rehabilitation. A convertible commitment, when issued, represents a binding obligation on the Government to execute the assistance payment contract (by insuring the mortgage) provided all applicable requirements are met. The obligation to execute the assistance payment contract will expire within six months of the issue date of the commitment, but can be extended one six months period if construction or substantial rehabilitation has been started.

(g) Builders or developers may also apply for assistance by requesting conversion of an outstanding conditional commitment to a firm commitment where there has been no reservation or obligation of contract authority.

(h) For purposes of this part, a mortgage shall be deemed approved for insurance prior to January 5, 1976, if a preliminary reservation of contract authority with respect to such mortgage was in effect on and before January 5, 1976.

[41 FR 1172, Jan. 6, 1976, as amended at 41 FR 43140, Sept. 30, 1976]

§ 235.39 Local government comment procedures.

(a) With respect to any request for a preliminary reservation involving 13 or more units in a locality with an approved housing assistance plan, the following procedures must be followed: Within 10 working days of the receipt of such a request, the Secretary shall, for purposes of compliance with Section 213 of the Housing and Community Development Act of 1974, forward a copy of the request to the chief executive officer of the unit of general local government in which the assisted housing is to be located, requesting comments and objections, if any. The unit of general local government shall have 30 days from receipt of the letter and copy of the request to object or otherwise submit comments as the response to the Secretary. Alternatively, the individual or organization making the request for a preliminary reservation may include with the request a statement of "no objection" or other comment from the unit of general local government, obtained in advance by the individual or organization. The unit of local government may object to the request on the grounds that it is inconsistent with the housing assistance plan. If such an objection is filed, the Secretary may not approve the request unless the Secretary determines that the request is consistent with the housing assistance plan. If the Secretary determines that the request is consistent with the plan, the Secretary shall notify the chief executive officer of the unit of general local government giving his reasons therefor in writing. If the Secretary concurs with the objection of the unit of local government, the Secretary shall so notify the individual or organization making the request for a preliminary reservation, stating the reasons therefor in writing.

(b) With respect to a request for a preliminary reservation involving 13 or more units in a locality that does not have an approved housing assistance plan, assistance under this part may not be approved unless the Secretary determines that there is a need for such assistance, taking into consideration any applicable State housing plan, and that there is or will be in the area public facilities and services adequate to serve the housing assisted. Within 10 working days of receipt of such a request, the Secretary will forward a copy of the request to the chief executive officer of the unit of general local government in which the proposed assisted housing will be located with a letter requesting comments on matters relevant to the determination required in this paragraph. The unit of general local government shall have 30 days from receipt of the letter and copy of the reservation request to submit any comments it wishes to

make to the Secretary. Any relevant comments received will be considered in connection with the Secretary's determination. As in the case of requests subject to paragraph (a) of this section, individuals or organizations submitting reservation requests subject to the provisions of this paragraph (b) of this section may satisfy the comment requirement of this section by obtaining a statement of the local government on the application in advance and submitting that statement with the reservation request to the Secretary.

§ 235.40 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed four percent of the mortgagor's share of each payment more than 15 days in arrears, to cover servicing and other costs attributable to the receipt of payments from the mortgagors after the date upon which payment is due. Such charge shall not be included in the assistance payment.

[42 FR 29306, June 8, 1977]

§ 235.45 Eligibility requirements for purchaser from rehabilitation sales project.

(a) Except as provided in this section, all of the provisions of this subpart shall apply to the insurance under section 235(j)(4) of the National Housing Act of a mortgage financing the purchase by a lower income person from a rehabilitation sales project of a single or two-family dwelling or a family unit in a condominium project. The rehabilitation sales project shall be financed with a mortgage insured under either section 221(h)(1) of the National Housing Act or section 235(j)(2) of such Act, provided that no applications for project mortgage insurance under such sections will be accepted after October 17, 1975.

(b) [Reserved]

(c) The mortgage shall comply with each of the following requirements:

(1) It shall involve a principal obligation in an amount not exceeding that portion of the unpaid balance of the project mortgage which is allocable to the dwelling or family unit being purchased.

(2) It shall bear interest at the maximum rate permitted under § 203.20 at the time the commitment for insurance was issued for the project mortgage.

(3) It shall be limited to the term of the project mortgage remaining at the time of the purchase.

(d) The purchase price of the dwelling or family unit shall equal that portion of the unpaid balance of the project mortgage which is allocable to the dwelling or family unit plus such additional amount, not less than $200, as the Secretary may determine to be reasonable. This additional amount may be paid in cash or its equivalent, and may be applied in whole or in part toward closing costs. It shall be paid by the mortgagor in lieu of the minimum investment prescribed in § 235.35.

(e) The mortgagor shall be required to have an annual income within the limits prescribed by the Secretary, but the asset limits prescribed for mortgagors under mortgages insured pursuant to §§ 235.1 through 235.40 shall not be applicable.

[41 FR 1172, Jan. 6, 1976, as amended at 45 FR 30604, May 8, 1980; 47 FR 29525, July 7, 1982]

Subpart B—Contract Rights and Obligations—Homes for Lower Income Families

SOURCE: 41 FR 1176, Jan. 6, 1976, unless otherwise noted.

§ 235.201 Cross-reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 235 of the National Housing Act, except the following provisions:

Sec.

203.259a Scope.
203.260 Amount of Mortgage Insurance Premium (MIP).
203.269 Open-end insurance charge.
203.280 One-time MIP.
203.281 Calculation of one-time MIP.
203.282 Mortgagee's late charge and interest.
203.283 Refund of one-time MIP.

Sec.
203.357 Deed in lieu of foreclosure.
203.379 Adjustment for damage or neglect.
203.380 Certificate of property condition.
203.389 Waived title objections.
203.400 Method of payment.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Rights and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.426 Inapplicability to housing in older, declining urban areas.
203.436 Claim procedure—graduated payment mortgages.
203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.
203.440 Through 203.495 insured home improvement loans.

(b) The term "property" or "each family dwelling unit" as used in §§ 203.251 through 203.435 of this chapter (Part 203, Subpart B) shall, when used in connection with a family unit in a condominium, be construed to include a "one-family unit and the undivided interest in the common areas and facilities."

[41 FR 1176, Jan. 6, 1976, as amended at 41 FR 42949, Sept. 29, 1976; 42 FR 29306, June 8, 1977; 47 FR 30754, July 15, 1982; 48 FR 28807, June 23, 1983; 52 FR 8070, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48205, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

§ 235.202 Amount of initial MIP.

(a) With respect to mortgages approved for insurance under this part prior to January 5, 1976, the initial MIP shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage, without taking into account delinquent payments or prepayments.

(b) With respect to mortgages approved for insurance under this part on and after January 5, 1976, the initial MIP shall be in an amount equal to seven-tenths of one percent of the average outstanding principal obligation for the first year of amortization under the mortgage, without taking into account delinquent payments or prepayments.

§ 235.204 Amount of annual MIP.

(a) With respect to mortgages approved for insurance under this part prior to January 5, 1976, after payment of the initial MIP an annual MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period preceding the date on which the premium becomes payable, without taking into account delinquent payments or prepayments.

(b) With respect to mortgages approved for insurance under this part on and after January 5, 1976, after payment of the initial MIP an annual MIP shall be paid in an amount equal to seven-tenths of one percent of the average outstanding principal obligation for the 12-month period preceding the date on which the premium becomes payable, without taking into account delinquent payments or prepayments.

§ 235.205 Deed in lieu of foreclosure.

All of the provisions of § 203.357 of this chapter relating to the acceptance of a deed in lieu of foreclosure shall apply to mortgages insured under this part, except that where a family unit in condominium is involved, the deed in lieu of foreclosure may be accepted only if the mortgagee establishes to the satisfaction of the Secretary that there are no unpaid assessments owed to the association or cooperative of owners.

§ 235.215 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Secretary, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

§ 235.220 Condition of property.

All of the provisions of § 203.379 relating to the adjustment of the insurance claim for damage or neglect and all of the provisions of § 203.380 of this chapter requiring the mortgagee to certify as to the condition of the property shall apply to mortgages insured under this subpart with the exception of mortgages involving condominium units. Sections 235.230 and 235.235 contain the comparable provisions applicable to mortgages involving condominium units.

[41 FR 1176, Jan. 6, 1976, as amended at 42 FR 29306, June 8, 1977]

SPECIAL PROVISIONS APPLICABLE ONLY TO MORTGAGES INVOLVING CONDOMINIUM UNITS

§ 235.221 Waived title objections.

(a) General provisions. All of the provisions of § 203.389 of this chapter (relating to the waiver by the Secretary of objections to title) shall apply to mortgages insured under this subpart, with the exception of mortgages involving condominium units.

(b) Provisions applicable to condominiums. Where the mortgage involves a condominium unit, the Secretary shall not object to title by reason of the following matters:

(1) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(2) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(3) Encroachments on the subject property by improvements on adjoining property, provided such encroachments do not interfere with the use of any improvements on the subject property.

(4) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property.

(5) Customary buildings or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

(6) Federal tax liens and rights of redemption arising thereform if the following conditions are observed. If the mortgagee acquired the property by foreclosure the mortgagee shall give notice to the Internal Revenue Service (IRS) of the foreclosure action. The Commissioner will not object to an outstanding right of redemption in IRS if (i) the Federal tax lien was perfected subsequent to the date of the mortgage lien, and (ii) the mortgagee has bid an amount sufficient to make the mortgagee whole if the property is in fact redeemed by the IRS.

[41 FR 1176, Jan. 6, 1976, as amended at 42 FR 29306, June 8, 1977]

§ 235.225 Changes in plan of apartment ownership.

The mortgagee shall notify the Secretary of any change in the plan of apartment ownership and in the administration of the property. Such notification shall be given either at the time of the conveyance of the property or at the time of the assignment of the mortgage. Any change in such plan shall require approval by the Secretary.

§ 235.230 Condition of multifamily structure.

(a) When a family unit is conveyed or a mortgage is assigned to the Secretary, the family unit and the common areas and facilities (including restricted common areas and facilities) designated for the particular unit shall be undamaged by fire, flood, earthquake, tornado, or boiler explosion, or, as to mortgages insured on or after June 8, 1977, due to failure of the mortgagee to take action as required by § 203.377. If the property has been damaged, either of the following actions shall be taken:

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Secretary.

(2) With the prior approval of the Secretary, the property may be conveyed or the mortgage assigned to the

Secretary without repairing the damage. In such instances, the Secretary shall deduct from the insurance benefits either his estimate of the decrease in value of the family unit or the amount of any insurance recovery received by the mortgagee, whichever amount is the greater.

(b) If the property has been damaged by fire and such property was not covered by fire insurance at the time of the damage, the mortgagee may convey the property or assign the mortgage to the Secretary without deduction from the insurance benefits for any loss occasioned by such fire if the following conditions are met:

(1) The property shall have been covered by fire insurance at the time the mortgage was insured.

(2) The fire insurance company shall have later canceled or refused to renew the policy.

(3) The mortgagee shall have notified the Secretary within 30 days (or within such further time as the Secretary may approve) of the cancellation of the fire insurance or of the refusal of the insuring company to renew the fire insurance. This notification shall have been accompanied by a certification of the mortgagee that diligent efforts were made, but it was unable to obtain fire insurance coverage at reasonably competitive rates and that it will continue its efforts to obtain adequate fire insurance coverage at competitive rates, including coverage under the FAIR Plan. A "reasonable rate" is a rate not more than 25 percent in excess of the rate or the advisory rate filed or used by the principal rating organization doing business in the state. If the property is located in a state which has no rate or advisory rate as provided in the preceding sentence, the mortgagee shall consult the Director of the local HUD office as to a reasonable rate. When hazard insurance coverage has been cancelled or renewal has been refused after the mortgage is insured, and other hazard insurance coverage cannot be obtained in an amount equal to the unpaid principal balance of the loan but insurance can be obtained in a reduced amount from a FAIR Plan or another insurance carrier, the Commissioner will accept the reduced coverage without reduction of mortgage insurance benefits, if the rates do not exceed the guidelines stated herein. If coverage in any amount is only available at rates in excess of a reasonable rate as defined herein, the mortgagor may but shall not be required to purchase such coverage. If coverage is purchased, the amount of any claim for insurance benefits under this part shall be reduced by the amount of any recovery of hazard insurance benefits by the mortgagee.

(c) The mortgagee shall not be liable for damage to the property by waste in connection with mortgage insurance claims paid on or after July 2, 1968. However, the mortgagee shall be responsible for damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377, as to all mortgages insured on or after January 1, 1977, but such responsibility shall not exceed the amount of its insurance claim as to a particular property.

[41 FR 1176, Jan. 6, 1976, as amended at 42 FR 29306, June 8, 1977]

§ 235.235 Certificate or statement of condition.

The mortgagee shall either certify that as of the date of the filing of deed for record, or assignment of the mortgage to the Secretary, the property was (a) undamaged by fire, flood, earthquake, tornado, or boiler explosion, and (b) as to mortgages insured or for which commitments to insure are issued on or after June 8, 1977, undamaged due to failure of the mortgagee to take action as required by § 203.377 of this chapter, or its claim shall be accompanied by a statement describing any such damage that may still exist together with a copy of the Secretary's authorization to convey the property in damaged condition. In the absence of evidence to the contrary, the mortgagee's certificate or its statement as to damage shall be accepted by the Secretary as establishing the condition of the family unit

and the common areas and facilities designated for the particular unit.

[42 FR 29306, June 8, 1977]

§ 235.240 Assessment of taxes.

When a family unit is conveyed to the Secretary or a mortgage is assigned to the Secretary, the unit shall be assessed and subject to assessment for taxes pertaining only to that unit.

§ 235.245 Certificate of tax assessment.

The mortgagee shall certify, as of the date of filing for record of the deed or assignment of the mortgage to the Secretary, that the family unit is assessed and subject to assessment for taxes pertaining to that unit.

§ 235.250 Cancellation of property insurance.

The provisions of § 203.382, relating to the cancellation of hazard insurance upon filing for record of the deed to the Secretary, are incorporated by reference and shall apply to hazard insurance policies carried solely for the family unit.

Subpart C—Assistance Payments—Homes for Lower Income Families

SOURCE: 41 FR 1178, Jan. 6, 1976, unless otherwise noted.

§ 235.301 Definitions.

The definitions contained in § 235.5 shall apply to this subpart. In addition the term "assistance payment" means that portion of a homeowner's or cooperative member's monthly mortgage payment which the Secretary becomes obligated to pay under an assistance payment contract.

§ 235.305 Contract for assistance payments.

This subpart shall constitute the contract between the mortgagee and the Secretary for assistance payments pursuant to section 235(b) of the National Housing Act.

§ 235.310 Execution of assistance payment contract.

(a) *Homeowners.* The issuance of a mortgage insurance certificate pursuant to § 235.1 et seq. shall also constitute the execution of the assistance payment contract with respect to the mortgage being insured.

(b) *Cooperative members.* The issuance of a certificate approving an application filed on behalf of a cooperative member shall constitute the execution of the assistance payment contract with respect to member named in the certificate.

§ 235.315 Qualified homeowners.

To qualify for assistance payments, the homeowner's income at the time of application for assistance, shall be within the limitations provided in § 235.10, and the homeowner shall be a mortgagor under a mortgage insured or to be issued pursuant to Subparts A and B to this part.

§ 235.320 Limitation of sales price.

To qualify for assistance payments, the homeowner shall not have paid in connection with the purchase of the property with respect to which assistance payments are to be made more than the Secretary's estimate of value of such property, nor shall the purchase price exceed 120 percent of the mortgage amount established pursuant to § 235.25 or § 235.30, whichever is applicable.

§ 235.325 Qualified cooperative members.

The following cooperative members shall qualify for assistance payments subject to the requirement of this Subpart C:

(a) A member of a cooperative association which operates a housing project financed with a mortgage insured under §§ 213.1 through 213.280 or §§ 221.502 through 221.790 of this chapter pursuant to Section 221(d)(3) of the National Housing Act provided:

(1) The housing project has been constructed or substantially rehabilitated not more than two years prior to the filing of the application for assistance payments and the dwelling unit had no previous occupant, or

(2) The cooperative member acquired membership and occupancy rights from one who was receiving assistance payments, or

(3) The cooperative member meets one of the following qualifications:

(i) The member's family is displaced from an urban renewal area, or as a result of a governmental action, or as a result of a major disaster as determined by the President.

(ii) The member's family shall include five or more minor persons.

(iii) The member's family shall have been occupying low-rent public housing at the time the application for assistance payments is filed, or

(4) That, without such assistance, the cooperative member would be likely to be involuntarily displaced from a dwelling in the project in connection with its conversion from rental to cooperative housing. Provided, That any family (i) which, by virtue of threatened displacement from a unit in a housing project to be operated by a cooperative association would be eligible for assistance under this provision in order to occupy a one-family unit in the resulting housing project, and (ii) which is precluded from such occupancy and membership in the cooperative association because of a rule of the association, may be entitled to assistance under this section in connection with a single family dwelling or a one-family unit in another housing project to be operated by a cooperative association, which otherwise meets the standards of this subsection and which is located in the same market area.

(b) A member of a cooperative association which operates a housing project which is financed under a State or local program providing assistance through loans, loan insurance or tax abatements, and which prior to completion of construction or rehabilitation is approved for receiving the benefits of this section.

[45 FR 62796, Sept. 22, 1980, as amended at 46 FR 56422, Nov. 17, 1981; 46 FR 61455, Dec. 17, 1981; 51 FR 11219, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988]

§ 235.330 Cooperative unit eligible for assistance payments.

(a) With respect to mortgages insured pursuant to conditional commitments issued or preliminary reservations approved before July 13, 1981, the maximum amount of the mortgage attributed to the dwelling unit of the cooperative member shall not exceed $32,000, except that such amount may be increased to $38,000 in the case of a family of five or more persons where the conditions set forth in § 235.25(a)(2) are met. These amounts may be increased to $38,000 and $44,000, respectively, in any geographical area where the Secretary finds cost levels so require.

(b) With respect to mortgages insured pursuant to conditional commitments issued or preliminary reservations approved on or after July 13, 1981, the maximum amount of the mortgage attributed to the dwelling unit of the cooperative member shall not exceed $40,000, except that such amount may be increased to $47,500 in the case of a family of five or more persons where the conditions set forth in § 235.25(a)(2) are met. These amounts may be increased to $47,500 and $55,000, respectively, in any geographical area where the Secretary finds cost levels so require.

[46 FR 29259, June 1, 1981]

§ 235.331 Increased maximum mortgage amount for physically handicapped persons.

If the mortgage relates to a dwelling unit to be occupied by a handicapped person as defined in § 235.5(c)(2), the otherwise applicable dollar amount limitation under § 235.330 may be increased in such amount as may be necessary to reflect the cost of making the dwelling unit accessible to and usable by such person, but not to exceed 10 percent of such limitation.

[49 FR 21320, May 21, 1984]

§ 235.335 Assistance payments and handling charges.

(a) The assistance payment on behalf of a mortgagor shall be the lesser of the following:

(1) The difference between 20 percent of the homeowner's or cooperative member's adjusted monthly income and the required monthly payment under the mortgage for principal, interest, taxes, insurance, and mortgage insurance premium.

(2) (i) With respect to mortgages approved for insurance under this part by the Secretary before January 5,

1976, the difference between the required monthly payment under the mortgage for principal, interest, and mortgage insurance premium and the monthly payment which would be required for principal and interest if the mortgage bore an interest rate of 1 percent.

(ii) With respect to mortgages approved for insurance under this part by the Secretary on or after January 5, 1976, but before March 7, 1978, the difference between the required monthly payment under the mortgage for principal, interest, and mortgage insurance premium and the monthly payment which would be required for principal and interest if the mortgage bore an interest rate of 5 percent.

(iii) With respect to mortgages approved for insurance under this part by the Secretary on or after March 7, 1978, the difference between the required monthly payment under the mortgage for principal, interest, and mortgage insurance premium and the monthly payment which would be required for principal and interest if the mortgage bore an interest rate of 4 percent.

(b) The assistance payment on behalf of a cooperative member shall be in an amount computed by using the formula prescribed in paragraph (a) of this section and applying the cooperative member's proportionate share of the obligation under the project mortgage to the items set forth in the formula.

(c) In addition to the assistance payment referred to in paragraphs (a) and (b) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Secretary deems sufficient to reimburse the mortgagee for its expense in handling the mortgage.

(d) Special assessments levied by a governmental body are to be included under the term "taxes" as a part of the total monthly payment. However, ground rents, assessments of a homeowners' association, and special assessments levied by persons or private organizations are not to be included.

[41 FR 1178, Jan. 6, 1976, as amended at 44 FR 25837, May 3, 1979]

§ 235.340 Time of payments.

The assistance payment shall be due on the first day of each month and shall be paid upon the receipt of a billing, on a form prescribed by the Secretary, from the mortgagee or its authorized agent.

§ 235.345 Term of Assistance Contract.

(a) *Homeowners.* The term of the assistance payment contract shall begin on the date of disbursement of mortgage proceeds as shown on the commitment for insurance and shall continue until the contract is terminated pursuant to § 235.375.

(b) *Cooperative members.* The term of the assistance payment contract shall begin on the date of issuance of a certificate approving an application filed on behalf of a cooperative member and shall continue until the contract is terminated pursuant to § 235.375.

§ 235.350 Mortgagor's required recertification.

(a) The mortgagee shall obtain from the homeowner (or from the cooperative association on behalf of the cooperative member), on a form prescribed by the Secretary a recertification as to occupancy, employment, family composition and income whenever one of the following events takes place:

(1) Annually, no earlier than 60 days before and no later than 30 days after the anniversary date of the mortgage or at such other anniversary date as set by the Secretary;

(2) No more than 30 days after the mortgagee is notified by the mortgagor or learns from any identifiable source:

(i) That the mortgagor or any adult (21 years or older) member of the family residing in the household changes or begins employment which results in an increase in the family income reported in the original application for assistance or the most recent recertification.

(ii) That the family income (excluding earnings of minors) has increased at least $50 per month (except in the case of a mortgagor under a mortgage insured before January 5, 1976).

(3) At such other times as the Secretary may require.

(b) With respect to mortgages insured under this part after January 5, 1976, the mortgagee shall obtain from the applicant-homeowner at the time application is made for assistance and at the time of annual recertification required under paragraph (a)(1) of this section, on a form provided by the Secretary, a statement of the aggregate amounts of total income prior to adjustments reported for all family members (other than minors) by the applicant-homeowner in his most recent federal income tax return, if he is required to file such a return. If separate returns are filed by separate members of the family, the total income prior to adjustments included in all such returns (except returns of minors) shall be reported. If the income so reported is more than 25 percent above the income reported on the recertification the mortgagee shall obtain from the homeowner a new recertification or a written explanation of the difference in income reported on the two forms.

(c) Mortgagors who fail to disclose their actual income in accordance with the requirements of this part will be required to reimburse the Secretary for all overpayments made on their behalf.

(d) The homeowner must meet the disclosure and verification requirements for Social Security Numbers in connection with any recertification under this section, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0267, 2502-0268, and 2577-0083)

[41 FR 1178, Jan. 6, 1976, as amended at 43 FR 60156, Dec. 26, 1978; 54 FR 39695, Sept. 27, 1989; 55 FR 11905, Mar. 30, 1990]

§ 235.355 Mortgagor's optional recertification.

Upon request of the mortgagor or cooperative member, the mortgagee must accept recertification whenever the mortgagor, his or her spouse, or an adult (21 years or older) member of the family changes or loses employment which results in a decrease in the family income reported in the most recent certification or recertification. This recertification must be on a form prescribed by the Secretary. See 24 CFR 200.1015(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for recertifications involving new family members.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0267, 2502-0268, and 2577-0083)

[54 FR 39595, Sept. 27, 1989, as amended at 55 FR 11905, Mar. 30, 1990]

§ 235.360 Adjustment in assistance payments.

The mortgagee shall make appropriate adjustments in the amount of the requested assistance payments to reflect changes in family income reported in any required or optional recertification of the homeowner or cooperative member. The adjustment shall not be retroactive except at the discretion of the Secretary. The adjustment shall apply only to assistance payments beginning with the payment due no earlier than the first day of the month following and no later than the first day of the second month following the date the mortgagor's recertification is received by the mortgagee.

§ 235.361 Recovery of assistance payments.

(a) The mortgagee shall refund to the Secretary all overpaid assistance payments except where the mortgagee has filed a claim for mortgage insurance benefits or the mortgage has been paid in full or the mortgagor has sold the property to an assumptor, and the overpayment did not result from the fraud, misrepresentation or failure to meet contractual obligations, on the part of the mortgagee.

(b) The mortgagee shall refund to the Secretary all overpaid assistance payments, together with the handling charges paid for each month of overpayment and interest on the amount refunded at the rate of 7% per annum, in any case where the overpayment resulted from fraud, misrepresentation or failure to meet contractual obligations, on the part of the mortgagee.

(c) The mortgagee may increase the mortgagor's required monthly payments in an amount which will reim-

burse the mortgagee (except handling charges and interest) within a reasonable time without causing undue hardship to the mortgagor, except where the overpayment resulted from fraud or misrepresentation on the part of the mortgagee.

(d) For purposes of this section "overpaid assistance payments" means assistance payments which the Secretary paid to the mortgagee on behalf of a mortgagor in excess of the amount of benefits to which the mortgagor was entitled and "failure to meet contractual obligations" means failure to request a required recertification or failure to act on a recertification as required in this part.

[43 FR 60156, Dec. 26, 1978]

§ 235.365 Mortgagee records.

The mortgagee shall maintain such records as the Secretary may require with respect to the mortgagor's payments, the mortgage assistance payments received from the Secretary, and the annual recertifications of financial status from the homeowner or mortgagor. Such records shall be kept on file for a period of time and in a manner prescribed by the Secretary and shall be available, when requested, for review and inspection by the Secretary or the Comptroller General of the United States.

§ 235.370 Effect of assignment of mortgage with an assistance payment contract.

Where a mortgage covered by an assistance payment contract is sold to another approved mortgagee, the buyer shall succeed to all the rights and become bound by all the obligations of the seller under such contract.

§ 235.375 Termination, suspension, or reinstatement of the assistance payments contract.

(a) *Termination.* The assistance payments contract shall be terminated when any of the following events occur:

(1) The contract of mortgage insurance is terminated, except when the mortgage has been assigned to the Secretary.

(2) The property is purchased by a homeowner not qualified to receive assistance payments.

(3) The cooperative member transfers his membership and occupancy rights to a new cooperative member not qualified to receive assistance payments.

(4) When the assistance payments contract has been suspended for a period of three years without reinstatement.

(b) *Suspension.* The assistance payments contract shall be suspended when any one of the following events occur:

(1) The homeowner or cooperative member ceases to occupy the property, except in the following instances:

(i) The property is purchased by a homeowner who immediately assumes the mortgage obligation with respect to which assistance payments have been made on behalf of the previous owner, and who meets the income and asset requirements prescribed by the Secretary.

(ii) The cooperative member transfers his membership and occupancy rights to a new member who assumes the mortgage obligation and who meets the income and asset requirements prescribed by the Secretary.

(2) The mortgagee determines that the mortgagor or cooperative member ceases to qualify for the benefits of assistance payments by reason of his income increasing to an amount enabling him to pay the full monthly mortgage payment by using 20 percent of the family income.

(3) Foreclosure is instituted.

(4) The mortgagee is unable to obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a required recertification of occupancy, employment, income, and family composition, and (if required) disclosure and verification of Social Security Numbers, as prescribed in § 235.350.

(5) At such other times as the Secretary may require.

(c) *Effect of termination or suspension.* Upon termination or suspension of the assistance payments contract, the payment due on the first day of the month in which the termination or suspension occurs shall be the last

payment to which the mortgagee shall be entitled; except that, in the case of a suspended contract, payment may be resumed after the contract is reinstated pursuant to paragraph (e) of this section.

(d) *Noneffect on mortgage insurance contract.* The termination or suspension of the assistance payments contract, where the mortgage insurance contract is not simultaneously terminated, shall have no effect on the mortgage insurance contract.

(e) *Reinstatement.* Where the assistance payments contract is suspended, it may be reinstated by the Secretary at the Secretary's discretion and on such conditions as the Secretary may prescribe. To be eligible for reinstatement under this section, the mortgagor or cooperative member must meet the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0267, 2502-0268, and 2577-0083)

[41 FR 1178, Jan. 6, 1976, as amended at 43 FR 60157, Dec. 26, 1978; 46 FR 56422, Nov. 17, 1981; 51 FR 11219, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 54 FR 39695, Sept. 27, 1989; 55 FR 11905, Mar. 30, 1990]

§ 235.499 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interest of a mortgagee under an existing contract for assistance payments. The effective date of these regulations is January 5, 1976.

Subpart D—Eligibility Requirements—Rehabilitation Sales Projects

SOURCE: 36 FR 24641, Dec. 22, 1971, unless otherwise noted.

§ 235.501 Cross-reference.

(a) All of the provisions of Subpart C, Part 221 of this chapter, concerning eligibility requirements of moderate income projects under section 221 of the National Housing Act, apply with full force and effect to rehabilitation sales projects insured under section 235(j) of the National Housing Act, except the following provisions:

Sec.
221.501 Certificate by Secretary to Commissioner.
221.502 Application.
221.503 Application fees.
221.504 Rejection of an application.
221.505 Inspection fee.
221.506 Fees on increases.
221.510 Eligible mortgagors.
221.514 Maximum mortgage amounts.
221.515 Adjusted mortgage amount—rehabilitation projects.
221.518 Maximum interest rate.
221.523 Application of payments.
221.524 Prepayment privileges.
221.525 Late charges.
221.531 Supervision applicable to general mortgagors.
221.532 Supervision applicable to limited distribution mortgagors.
221.533 Supervision applicable to cooperative and investor sponsor mortgagors.
221.534 Supervision applicable to cooperative mortgagors.
221.535 Supervision applicable to investor sponsor mortgagors.
221.535a Supervision applicable to builder-seller mortgagors.
221.536 Occupancy requirements applicable to all mortgagors.
221.537 Additional occupancy requirements; preferred purchasers or tenants.
221.540 Financial requirements.
221.543 Advance amortization.
221.545 Development of property.
221.546 Commercial and community facilities.
221.559 Eligibility of miscellaneous type mortgagors.
221.559b Eligibility for insurance under section 221(j) of mortgage financing purchase of existing project by cooperative.
221.560 Eligibility of refinanced mortgage.
221.575 Protection of work in process.

(b) For the purposes of this subpart, all references in Part 221 of this chapter to a rehabilitation sales mortgagor shall be construed to refer to a mortgagor under a mortgage insured pursuant to the provisions of this subpart.

[36 FR 24636, Dec. 22, 1971, as amended at 39 FR 12005, Apr. 2, 1974]

§ 235.505 Definition of "nonprofit mortgagor".

As used in this subpart, the term "nonprofit mortgagor" shall mean a corporation or association organized

for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is neither controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be subject to such regulation or supervision as to rents, charges and methods of operation as the Commissioner deems necessary to effectuate the purposes of this subpart.

§ 235.510 Application.

(a) An application for insurance of a mortgage on a project shall be submitted to the local FHA office by an approved mortgagee and by the sponsors of the project. Such application shall be on an approved FHA form.

(b) No application shall be considered unless the following requirements are met:

(1) All of the exhibits called for in the application are submitted to the Commissioner.

(2) The Commissioner has allocated to the project funds for assistance payments.

(3) Fees as required in § 235.520 are remitted.

§ 235.515 Special certifications—family unit ownership.

Where the project is to involve the type of property described in § 235.530(c), the following certification shall be submitted with the application for insurance:

(a) *Mortgagee's certificate.* A certification by the mortgagee that the law of the jurisdiction will permit the project to be converted to a plan of apartment ownership which will meet the requirements of this part.

(b) *Mortgagor's certificate.* A certification by the mortgagor that it intends, upon completion of the project, to commit the ownership of the project to a plan of apartment ownership under which each family unit in the project will be eligible for financing under individual mortgages insured pursuant to § 235.1 et seq. The mortgagor shall also certify that it intends faithfully and diligently to make all reasonable effort to establish the plan of apartment ownership.

§ 235.520 Application, commitment, and inspection fees.

A combined application, commitment, and inspection fee in the amount of $40 per dwelling unit to be contained in the proposed project shall be paid with the filing of the application. A subsequent application for an increase in the number of units to be contained in the project shall be accompanied by a payment of an additional fee in the amount of $40 for each additional unit.

§ 235.525 Eligible mortgagors.

A mortgage shall be executed by a mortgagor that is a nonprofit organization or a public body or agency and is approved by the Commissioner. Such mortgagor shall engage in the following undertaking:

(a) The purchase of housing and the rehabilitation of such housing, if it is deteriorating or substandard.

(b) The sale of such housing, under terms and conditions satisfactory to the Commissioner, to individuals or families meeting the income criteria prescribed for a mortgagor whose mortgage is insured under § 235.1 et seq.

§ 235.530 Eligible types of property.

To be eligible for insurance, the property shall consist primarily of substandard or deteriorating housing which is to be rehabilitated, but may include one or more existing dwellings or units not requiring rehabilitation. Such property may be located on one or more tracts or parcels which may or may not be contiguous, and shall consist of one of the following types or a combination of such types:

(a) Four or more single-family or two-family dwellings which may be of detached, semidetached, or row construction.

(b) Four or more one-family units in a structure or structures for which a plan of family unit ownership, approved by the Commissioner, is established or is to be established as required in § 235.515.

§ 235.535 Maximum mortgage amount.

(a) The mortgage shall involve a principal obligation not in excess of

the Commissioner's estimate of the cost of any rehabilitation plus the lesser of either of the following:

(1) The actual purchase price of the land and improvements.

(2) The Commissioner's estimate of the value of the land and improvements prior to the rehabilitation.

(b) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

[36 FR 24636, Dec. 22, 1971, as amended at 41 FR 11287, Mar. 18, 1976]

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum with respect to mortgages insured after February 23, 1990.

(b) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of that which the Commissioner had committed to insure at initial endorsement, shall bear interest at the rate agreed upon by the mortgagor and the mortgagee which rate shall not exceed the greater of:

(1) The maximum interest rate established by the Secretary and in effect at the time the mortgage was initially endorsed,

(2) The maximum interest rate established by the Secretary and in effect at the time the application for a mortgage increase was received by the Commissioner, or

(3) The maximum interest rate established by the Secretary and in effect at the time the increase is approved by the Commissioner.

[40 FR 47106, Oct. 8, 1975, as amended at 40 FR 58134, Dec. 15, 1975; 55 FR 9724, Mar. 15, 1990]

§ 235.545 Application of payments.

(a) The mortgage shall provide that all amounts to be paid monthly by the mortgagor to the mortgagee shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgage shall further provide that such payment will be applied in the following order:

(1) Premium charges under the contract of insurance.

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of the monthly payment by the mortgagor shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be cured.

§ 235.550 Late charges.

A late charge may be collected by the mortgagee for each payment to interest or principal more than 15 days in arrears, if provided in the mortgage, but such charges shall not exceed two cents for each dollar of the mortgagor's share of such payment. Such charge shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment. Such charge shall not be included in the assistance payment made by the Commissioner to the mortgagee pursuant to § 235.801 et seq.

§ 235.555 Prepayment privileges.

(a) A mortgage indebtedness may be prepaid in full or in part only with the prior written approval of the Commissioner, except where the prepayment occurs as a result of selling all of the units in the project.

(b) The mortgagee shall not collect any charge for the prepayment of the mortgage in connection with the sale by the mortgagor of units in the project.

(c) If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the

mortgage and such prepayments are not made in connection with the sale of individual dwelling or family units, the mortgagee will be permitted to collect such reasonable charge on such excess as is agreed upon between the mortgagor and the mortgagee.

§ 235.560 Financial requirements.

All of the provisions of § 221.540 of this chapter, relating to the financial requirements where there is to be insurance of advances, shall apply except the working capital deposit prescribed in paragraph (a) of this section shall not be required.

§ 235.565 Rental of housing units.

Pending the sale of the housing units in the project (or in the event the mortgagor is unable to sell any of such units), the mortgagor may rent or lease such units, with the approval of the Commissioner and under such terms and conditions as the Commissioner may require.

Subpart E—Contract Rights and Obligations—Rehabilitation Sales Projects

SOURCE: 36 FR 24642, Dec. 22, 1971, unless otherwise noted.

§ 235.701 Cross-reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 235(j) of the National Housing Act except the following provisions:

Sec.
207.259 Insurance benefits.
207.262 No vested right in fund.

[37 FR 8664, Apr. 29, 1972]

§ 235.705 Forbearance relief.

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of the mortgagor's regular mortgage payments for a specified period of time, if the Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time. Such determination shall be evidenced by the Commissioner's written approval of the forbearance agreement.

(b) The time specified in § 207.258(a) of this chapter, within which a mortgagee shall give the Commissioner written notice of its intention to file an insurance claim, shall be suspended for the period of time specified in the forbearance agreement as long as the mortgagor complies with the requirements of such agreement.

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its election to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 235.715(b) shall be applicable.

§ 235.710 Request by Commissioner for assignment of mortgage.

(a) The mortgagee shall, when requested by the Commissioner, assign to the Commissioner a mortgage on which assistance payments are being made pursuant to the provisions of § 235.801 et seq., regardless of the default status of such mortgage.

(b) If the mortgage is not in default when the Commissioner requests its assignment, the first day of the month following the Commissioner's request shall be considered the date of default.

§ 235.715 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project

mortgages insured under this subpart, except as follows:

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

(b) When the mortgage is assigned to the Commissioner pursuant to § 235.710 or is assigned in a case where the mortgagor fails to comply with the requirements of a forbearance agreement approved by the Commissioner in accordance with the requirements of § 235.705 or is assigned in a case where the mortgagor fails to cure the default at the expiration of the forbearance period, the insurance benefits shall be paid in cash and shall be computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b)(1)(iii) of this chapter, the cash payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, an amount shall be included equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 207.256, 207.258(b), and 235.705(c) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such amount shall be computed only to the date on which the particular action should have been taken or to which it was extended.

(c) Where the assignment of the mortgage is made pursuant to § 235.710 and the mortgage is not in default at the time of such assignment, the 1 percent deduction prescribed in § 207.259(b)(2)(iv) of this chapter shall not be applicable.

Subpart F—Assistance Payments—Rehabilitation Sales Projects

Source: 36 FR 24643, Dec. 22, 1971, unless otherwise noted.

§ 235.801 Assistance payment contract.

This subpart shall constitute the assistance payment contract between the mortgagee and the Commissioner pursuant to section 235(j)(7) of the National Housing Act. The endorsement of the mortgage for insurance shall constitute the execution of the assistance payment contract with respect to the mortgage being insured.

§ 235.805 Eligible mortgages.

Assistance payments pursuant to this subpart shall be made only in connection with a mortgage insured under Subparts D and E of this part.

§ 235.810 Term of payments.

(a) The term for which assistance payments shall be made shall begin on the following dates:

(1) With respect to a mortgage involving insurance of advances, on the date of the Commissioner's final endorsement of the mortgage note for insurance, or such earlier date as may be established by the Commissioner.

(2) With respect to a mortgage insured upon completion, the date on which the Commissioner endorses the mortgage note for insurance.

(b) The term of the assistance payments shall end upon the occurrence of one of the following events:

(1) The termination of the contract of mortgage insurance.

(2) The Commissioner's receipt of the mortgagee's notice of intention to file an insurance claim pursuant to § 207.258(a) of this chapter. In the event the mortgagee fails to provide the Commissioner with such notice of intention within the time specified in § 207.258(a) of this chapter, the last day on which the Commissioner should have received the mortgagee's notice shall be deemed the date the Commissioner received such notice.

(3) At the discretion of the Commissioner, the mortgagor's failure to meet its obligations under the regulatory

agreement it has entered into with the Commissioner.

(c) Upon the termination of the assistance payment contract, the payment due on the first of the month in which the termination occurs shall be the last payment to which the mortgagee shall be entitled.

(d) Where the term of assistance payments is ended pursuant to paragraph (b) (2) or (3) of this section, the contract for assistance payment may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, assistance payments will be made to the mortgagee for those months during which such payments were suspended.

§ 235.815 Time of payments.

The assistance payment shall be due on the first day of each month following the beginning of the term, and shall be paid upon the receipt of a billing (on a form prescribed by the Commissioner) from the mortgagee or its servicer.

§ 235.820 Amount of assistance payments.

(a) The assistance payment to the mortgagee shall be the difference between the following:

(1) The monthly installment for principal, interest and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage; and

(2) The monthly installment for principal and interest the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 percent per annum.

(b) As individual family units in the project are sold and as the principal amount of the mortgage is reduced by payment of the portion of the mortgage attributable to the sold units and as the amount of the mortgage payments which the mortgagor is obligated to pay is reduced, proportionate reductions will be made in the mortgage assistance payments.

(c) In addition to the assistance payment referred to in paragraph (a) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the mortgagee for its expenses in servicing the mortgage.

§ 235.825 Application of payments.

The mortgagee shall apply each monthly assistance payment, together with the mortgagor's monthly payment, to the items and in the order set out in the mortgage.

§ 235.830 Mortgagee records.

The mortgagee shall maintain such records as the Commissioner may require with respect to the mortgagor's payments and the assistance payments received from the Commissioner. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or Comptroller General of the United States.

§ 235.835 Effect of assignment of mortgage.

In the event a mortgage subject to assistance payments is assigned to another approved mortgagee, the assignee shall thereupon succeed to all the rights and obligations of the assignor under the assistance payments contract.

§ 235.999 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under a contract for assistance payments already in effect or to be put in effect pursuant to the Commissioner's commitment to enter into such contract.

Subpart G—Servicing Responsibilities—Homes for Lower Income Families

§ 235.1000 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 235 of the National Housing Act.

[42 FR 29306, June 8, 1977]

§ 235.1001 Providing information.

The statement of interest paid and taxes disbursed furnished by the mortgagee to the mortgagor pursuant to § 203.508(c) of this chapter shall include, or be accompanied by, an accounting of the total amount of assistance payments paid by the Secretary and applied to the mortgagor's account during the preceding year. Such accounting will be provided in a manner which indicates (or permits the mortgagor readily to compute) the excess of the total amount of interest payments made during the year over the amount of the assistance payments made by the Secretary. The foregoing accounting shall contain, or be accompanied by, notification regarding the deductibility of interest payments made by the mortgagor in substantially the following language: "If you itemize deductions on your income tax returns, please read this notice. Under § 1.163-1(d) of Federal Income Tax Regulations, you, as the borrower, may deduct for Federal income tax purposes only that part, if any, of mortgage interest payments made during the year which exceeded the amount of assistance payments made by HUD during the year. You are urged to contact your tax advisor or State and local tax offices for guidance regarding the deductibility of payments on your State or local income tax returns."

(Approved by the Office of Management and Budget under control number 2502-0235)

[48 FR 28986, June 24, 1983]

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

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AUTHORITY: Secs. 211 and 236 of the National Housing Act (12 U.S.C. 1715b and 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24643, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements for Mortgage Insurance

§ 236.1 Cross-reference.

All of the provisions of Subpart C, Part 221 of this chapter, concerning eligibility requirements of moderate income projects under section 221 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 236 of the National Housing Act, except the following provisions:

Sec.
221.501 Certificate by Secretary to Commissioner.
221.502 Application.
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221.560 Eligibility of refinanced mortgages.
221.575 Protection of work in process.

[36 FR 24643, Dec. 22, 1971, as amended at 39 FR 12005, Apr. 2, 1974; 39 FR 32437, Sept. 6, 1974]

§ 236.2 Definitions.

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent;

(b) $400 for any Elderly Family;

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) Child Care Expenses.

Adjusted Monthly Income. One-twelfth of Adjusted Income.

Assisted admission. Admission to a unit in the program at a rent that is

less than the HUD-approved market rental.

Annual income. See § 236.3.

Basic rent. The HUD-approved monthy rent for a unit in a section 236 project determined on the basis of operating the project with payments of principal and interest at the rate of one percent per annum. It includes the cost of utility services if such charges are paid by the project owner.

Child Care Expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member who is 18 years of age or older to be gainfully employed or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of Annual Income received from such employment.

Commissioner. The Federal Housing Commissioner or his or her authorized representative.

Dependent. A member of the Family household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a Full-time Student.

Disabled Person. A person under a disability, as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*l*)).

Displacee. A person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

Elderly Family. A Family whose head or spouse (or sole member) is an Elderly, Disabled or Handicapped Person. It may include two or more Elderly, Disabled or Handicapped Persons living together, or one or more of these Persons living with one or more Live-in Aides.

Elderly person. A person who is at least 62 years of age.

Family. Two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling unit.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Gross Rent. The total monthly cost of housing a Qualified Tenant, which is the sum of the Basic Rent and any Utility Allowance for the assisted unit.

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

Handicapped Person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Live-in aide. A person who resides with an Elderly, Disabled, or Handicapped Person or Persons and who: (a) Is determined to be essential to the care and well-being of the Person(s); (b) is not obligated for the support of the Person(s); and (c) would not be living in the unit except to provide the necessary supportive services. (See § 236.3(c) for treatment of Live-in Aide's income.)

Market Rent. The HUD-approved monthly rent determined on the basis of operating the project with payments of principal, interest and mortgage insurance premium that the mortgagor is obligated to pay under the mortgage (disregarding HUD's in-

terest reduction and rental assistance payments). It includes the cost of utility services if such charges are paid by the project owner.

Medical expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

Net Family Assets. Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity in a housing cooperative unit in which the family resides. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by or under the control of any member of the family, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund should be counted when determining Annual Income.) In determining Net Family Assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Qualified Tenant. (a) For purposes of Subpart A, an individual or Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustment for smaller and larger families, except that HUD may establish income limits higher or lower than 80 percent of the median for the area on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(b) The benefits of the interest reduction payments are available only to an individual or a Family renting a dwelling unit in a project owned by an eligible housing owner or occupying such a dwelling unit as a cooperative member.

Tenant Rent. The amount payable monthly by a Qualified Tenant as rent to the owner. Where all utilities (except telephone) and other essential housing services are supplied by the owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance for tenants receiving the benefit of Rental Assistance Payments, and Tenant Rent is the monthly amount calculated under § 236.55 for section 236 tenants not receiving the benefit of Rental Assistance Payments.

Total Tenant Payment. For the Rental Assistance Payments Program, the monthly amount calculated under § 236.735.

Utility allowance. If the cost of utilities (except telephone) and other essential housing services for an assisted unit is not included in the rent paid to the housing owner but is the responsibility of the tenant occupying the unit, an amount equal to the estimate approved by HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Utility Reimbursement. The amount, if any, by which the Utility Allowance exceeds the Family's Total Tenant Payment. This term is applicable only to the Rental Assistance Program under Subpart D.

Welfare Assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or joint-

ly, by Federal, State or local governments.

[51 FR 21858, June 16, 1986; 51 FR 24324, July 3, 1986; 51 FR 34590, Sept. 30, 1986; 52 FR 34112, Sept. 9, 1987]

§ 236.3 Annual Income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

(b) Annual Income includes but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (but see paragraph (c)(7) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 236.2;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 236 of the National Housing Act. A notice will be published in the FEDERAL REGISTER and distributed to housing owners identifying benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) If it is not feasible to anticipate a level of income over a 12-month period, the income for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

[51 FR 21860, June 16, 1986, as amended at 52 FR 34113, Sept. 9, 1987]

§ 236.4 Application, commitment and inspection fees.

All of the provisions of §§ 221.503 and 221.505 of this chapter governing application, commitment and inspection fees shall apply to mortgages insured under this part, except that such fees shall not be required in either of the following instances:

(a) Where an application for a loan under section 202 of the Housing Act of 1959 has been filed previously in connection with the project, but section 202 funds are not available to make the loan.

(b) Where the project has received a loan under section 202 of the Housing Act of 1959 which is being refinanced, provided, at the time of the application for insurance of the refinancing mortgage under section 236, the project is either in the construction stage or has been completed less than 6 months.

[36 FR 24643, Dec. 22, 1971, as amended at 39 FR 12005, Apr. 2, 1974. Redesignated at 49 FR 29590, July 23, 1984]

§ 236.5 Application.

(a) An application for the issuance of a site appraisal and market analysis (SAMA) letter must be submitted by the project sponsor. An application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsor. Such applications shall be submitted to the local HUD field office on FHA-approved forms.

(b) No application shall be considered unless the following requirements are met:

(1) All of the exhibits called for in the application form are submitted to the Commissioner.

(2) The Commissioner has allocated to the project contract authority for interest reduction payments.

(c) An applicant may initially elect to submit an application for a SAMA letter, a conditional commitment or a firm commitment depending upon the completeness of the drawings, specifications and other required exhibits.

[39 FR 12005, Apr. 2, 1974, as amended at 40 FR 22829, May 27, 1975]

§ 236.10 Eligible mortgagors.

A mortgage shall be executed by a mortgagor approved by the Commissioner and meeting the following qualifications:

(a) *Nonprofit mortgagors.* The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is neither controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be subject to such regulation or supervision as to rents, charges and methods of operation as the Commissioner deems necessary to effectuate the purposes of this subpart.

(b) *Builder-seller mortgagors.* The builder-seller mortgagor shall be a special type of mortgagor which is organized to:

(1) Construct or rehabilitate a multifamily project for sale (upon final endorsement) to a private nonprofit corporation meeting the qualifications of paragraph (a) of this section. Prior to insurance of the mortgage, the mortgagor shall have entered into a written agreement with such nonprofit corporation to sell the project at a purchase price not to exceed the project's actual cost as certified pursuant to § 221.550 of this chapter.

(2) Operate the project, subject to special controls and requirements of the Commissioner as to rents, charges, rates of return, and methods of operation, until the conveyance to the nonprofit mortgagor.

(3) Operate the project as a limited distribution mortgagor subject to the supervision, controls and requirements prescribed by the Commissioner for such mortgagor, in the event of failure to convey to a nonprofit mortgagor either at final endorsement or within such additional period as may be agreed to in writing by the Commissioner.

(c) *Limited distribution mortgagor.* The limited distribution mortgagor shall be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the Commissioner) as to distribution of income and shall be regulated as to rents, charges, rate of return, and methods of operation in such form and manner as is satisfactory to the Commissioner to effectuate the purposes of this subpart.

(d) *Cooperative and investor sponsor mortgagors.* (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation which restricts permanent occupancy of the project to the members of the corporation who must meet membership eligibility requirements approved by the Commissioner.

(2) The investor sponsor mortgagor shall be a special type of mortgagor which is organized to:

(i) Construct or rehabilitate a multifamily project to be transferred to a cooperative mortgagor within 2 years from the date of completion.

(ii) Operate the project until 2 years from the date of completion or until the conveyance to the cooperative mortgagor, whichever occurs sooner, subject to the controls and requirements of the Commissioner.

(iii) Operate the project as a limited distribution mortgagor subject to the controls and requirements of the Commissioner, in the event of failure to convey to a cooperative mortgagor within the 2-year period.

(3) Such a mortgagor will be regulated or restricted by the Commissioner as to rents or sales, charges, rate of return, and methods of operation in such manner as will effectuate the purposes of this subpart and protect the consumer interest.

§ 236.11 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0118)

[54 FR 39695, Sept. 27, 1989]

§ 236.12 Maximum mortgage amounts.

(a) The mortgage shall involve a principal obligation not in excess of the lowest of the following:

(1) Dollar limitations on units. For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) For projects involving eligible nonprofit mortgagors:

(*a*) $21,563 without a bedroom
(*b*) $24,662 with one bedroom
(*c*) $29,984 with two bedrooms
(*d*) $38,379 with three bedrooms
(*e*) $42,756 with four or more bedrooms

(ii) For projects involving eligible mortgagors other than nonprofit mortgagors:

(*a*) $19,406 without a bedroom
(*b*) $22,195 with one bedroom
(*c*) $26,985 with two bedrooms
(*d*) $34,541 with three bedrooms
(*e*) $38,480 with four or more bedrooms

(2) *New construction.* (i) In the case of new construction where the mortgagor is a nonprofit, builder-seller, cooperative, or investor-sponsor, the Commissioner's estimate of replacement cost of the property or project when the improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner.

(ii) In the case of new construction where the mortgagor is a limited distribution mortgagor, 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builder's and sponsor's profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner, after determining such allowance is unreasonable, prescribes a lesser percentage.

(3) *Repair or rehabilitation.* (i) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a nonprofit, builder-seller, cooperative, or investor-sponsor, the sum of the estimated cost of the repairs or rehabilitation of the project and the Commissioner's estimate of the value of the property before repairs or rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a limited distribution mortgagor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(b) *Increased mortgage amount-elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraph (a)(1) of this section not to exceed:

(1) For projects involving eligible nonprofit mortgagors:

(i) $22,692 without a bedroom
(ii) $26,012 with one bedroom
(iii) $31,631 with two bedrooms
(iv) $40,919 with three bedrooms
(v) $44,917 with four or more bedrooms

(2) For projects involving eligible mortgagors other than nonprofit mortgagors:

(i) $20,422 without a bedroom
(ii) $23,410 with one bedroom
(iii) $28,467 with two bedrooms
(iv) $36,827 with three bedrooms
(v) $40,425 with four or more bedrooms

(c) *Increased mortgage amounts—high cost areas.* (1) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraphs (a)(1) and (b) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Maximum mortgage amount—leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple, reduced by an amount equal to the capitalized value of the ground rent.

(e) *Loans to cover 2-year operating loss*—(1) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such rate exceed the rate in effect under § 236.15 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

[39 FR 32437, Sept. 6, 1974, as amended at 44 FR 51801, Sept. 5, 1979; 48 FR 16669, Apr. 19, 1983]

§ 236.15 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after November 1, 1983.

(b) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of that which the Commissioner had committed to insure at initial endorsement, shall bear interest at the rate agreed upon by the mortgagor and the mortgagee which rate shall not exceed the greater of: (1) The maximum interest rate established by the Secretary and in effect at the time the mortgage was initially endorsed, (2) the maximum

interest rate established by the Secretary and in effect at the time the application for a mortgage increase was received by the Commissioner, or (3) the maximum interest rate established by the Secretary and in effect at the time the increase is approved by the Commissioner.

[40 FR 47160, Oct. 8, 1975, as amended at 40 FR 58134, Dec. 15, 1975; 48 FR 51456, Nov. 9, 1983]

§ 236.20 Mortgage release provisions.

A mortgage insured under this subpart may provide that, at any time after final endorsement, the property covered by the mortgage may be released, in whole or in part, with the approval of the Commissioner and under such terms and conditions as he may prescribe, upon payment of the portion of the unpaid balance of the mortgage allocable to the property released.

§ 236.25 Application of payments.

(a) The mortgage shall provide that all amounts to be paid monthly by the mortgagor to the mortgagee shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgage shall further provide that such payment will be applied in the following order:

(1) Premium charges under the contract of mortgage insurance.

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of the monthly payment by the mortgagor shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be cured.

§ 236.30 Prepayment privileges.

(a) *Prepayment in full*—(1) *Without prior Commissioner consent.* Except as provided in paragraph (f) of this section, a mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated without the prior consent of the Commissioner where the mortgagor is a limited distribution type and either of the following conditions is met:

(i) If the prepayment occurs after the expiration of 20 years from the date of final insurance endorsement of the mortgage, provided the mortgagor is not receiving payments from the Commissioner under a rent supplement contract pursuant to the provisions of Part 215 of this chapter; or

(ii) If the prepayment occurs as a result of the sale of the project to a cooperative or private nonprofit corporation or association, provided the sale is financed with a mortgage insured under § 236.40(d).

(2) *With prior Commissioner consent.* In all cases, except those outlined in paragraph (a)(1) of this section, a mortgage indebtedness shall not be prepaid in full and the Commissioner's controls shall not be terminated unless the Commissioner gives his prior consent to such prepayment.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to the maturity and with the approval of the Commissioner, partial prepayments may be made after 30 days' written notice to the mortgagee on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the mortgage, the mortgagee will be permitted to collect such reasonable charge on such excess as is agreed upon between the mortgagor and the mortgagee.

(d) *Prepayment in connection with sale of units.* With the prior written approval of the Commissioner, the mortgagor may sell the individual dwelling units in the project to lower income, elderly, or handicapped purchasers. The mortgagee shall not collect any charge for the prepayment of the mortgage in connection with the sale of such units.

(e) *Prepayment with mortgagee approval.* Where the mortgage is given to secure a loan made by a mortgagee which has obtained the funds for such loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a provision that the mortgage indebtedness may not be prepaid in whole or in part without prior written consent of the mortgagee and the Commissioner. The consent of the mortgagee to prepay the debt, in whole or in part, may be conditioned upon payment to the mortgagee by the mortgagor of such fees and charges which are reasonable as determined by the Commissioner and which are related to the mortgagee's cost of redeeming the bonds or bond anticipating notes sold to finance the loan.

(f) *Prepayment of mortgages subject to Part 248.* Mortgages which are described in paragraph (a)(1) of this section and which are, or prior to assignment to the Commissioner were, insured under this part, may be prepaid in full only in accordance with a plan of action approved by the Commissioner pursuant to Part 248 of this chapter.

[36 FR 24643, Dec. 22, 1971, as amended at 42 FR 62132, Dec. 9, 1977; 53 FR 616, Jan. 11, 1988; 53 FR 6601, Mar. 2, 1988; 53 FR 11234, Apr. 5, 1988]

§ 236.35 Late charge.

A late charge may be collected by the mortgagee for each payment to interest or principal more than 15 days in arrears, if provided in the mortgage, but such charge shall not exceed 2 cents for each dollar of the mortgagor's share of such payment. Such charge shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment. Such charge shall not be included in the interest reduction payment made by the Commissioner to the mortgagee pursuant to § 236.501 et seq.

§ 236.40 Eligibility of miscellaneous mortgages.

(a) *Transfer.* A mortgage initially insured under Part 221, Subpart C of this chapter, which has been approved for the below market interest rate (§ 221.518(b) of this chapter) and which has not received the Commissioner's final endorsement, may be insured under this subpart. The principal amount of such mortgage shall not exceed that which would be applicable if the mortgage were to be insured under Part 221.

(b) *Refinancing—in general.* A mortgage given to refinance an existing mortgage insured under the Act may be insured under this subpart pursuant to section 223(a)(7) of the Act. The new mortgage shall be limited in amount and in term as follows:

(1) The principal of the new mortgage shall not exceed the lowest of these amounts:

(i) The original principal amount of the existing insured mortgage.

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added—

(*a*) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(*b*) The costs, as determined by the Commissioner, of improvements, upgrading or additions required to be made to the property.

(*c*) Loan closing charges.

(iii) The Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property, except for general or limited distribution mortgagors when the amount shall not exceed 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(2) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determined that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

(c) *Refinancing—existing project under section 202 of the Housing Act*

of 1959. A mortgage given to refinance a loan which was made under section 202 of the Housing Act of 1959 may be insured under this subpart, if the application for insurance is filed with the Commissioner prior to the date of project completion, or within such reasonable time thereafter as the Commissioner may allow.

(d) *Purchase.* In the case of a project financed with a mortgage insured under this subpart which involves a mortgagor other than a cooperative or a private nonprofit corporation or association and which is sold to a cooperative or a nonprofit corporation or association, a mortgage given to finance the purchase may be insured under this subpart. The insurance of such mortgage shall be governed by the following:

(1) The amount of the mortgage shall not exceed the lesser of the amounts determined by applying the formulas in paragraph (d)(1) (i) or (ii) of this section as follows:

(i) An amount, the debt service of which can be met from project income remaining after payment of all operating expenses, taxes, and required services, provided the project is operated on a nonprofit basis and the rental charges in effect at the time of purchase are not raised.

(ii) The project's actual cost at the time of completion (as determined by the Commissioner) or the project's fair market value for residential purposes as determined by the Commissioner on the basis of operating the project without the benefit of any interest reduction payments or rent supplement payments and without the controls by the Commissioner over the project imposed by the provisions in this subpart, whichever amount is the greater.

(2) Subject to limitations prescribed in paragraph (d)(1) of this section, it is intended that the mortgage will provide an amount which will enable the seller of the project to realize a net amount out of the sales proceeds sufficient to recover its investment and to retire the outstanding mortgage.

(3) The term of the mortgage may exceed the remaining term of the original mortgage on the project, but in no event may it exceed the Commissioner's estimate of the remaining economic life of the project.

§ 236.45 Commercial and community facilities.

(a) The project may include such nondwelling commercial and community facilities as the Commissioner determines will be adequate and appropriate to serve the occupants and the surrounding neighborhood, provided the project remains predominantly residential and any nondwelling facility included in the mortgage is found by the Commissioner to contribute to the economic feasibility of the project. In approving such facilities, the Commissioner shall give consideration to the possible effect of the project on other business enterprises in the community.

(b) In the case of a project designed primarily for occupancy by the elderly or handicapped, the project may include such related facilities as cafeterias or dining halls, community rooms, workshops, infirmaries, or other inpatient or outpatient health facilities and other essential service facilities for use by elderly or handicapped families.

§ 236.50 Supervision applicable to limited distribution mortgagors.

(a) Except as agreed to otherwise by the Commissioner pursuant to Part 248 of this chapter—

(1) Dividends or other distributions as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period; and

(2) The amount of any allowable distribution, or disbursement from surplus cash, shall not exceed in any one fiscal year more than 6 percent of the mortgagor's initial equity investment in the project, as determined by the Commissioner.

(b) No dividends or other distributions shall be declared or made except out of surplus cash available and remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of

any mortgage or note insured or held by the Commissioner.

(ii) All amounts required to be deposited in the reserve fund for replacements.

(iii) All obligations of the project (other than the mortgage insured or held by the Commissioner) unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project.

(ii) All tenant security deposits held.

(c) The right to any allowable distribution or disbursement from surplus cash shall be cumulative.

(d) No distribution of any kind may be made from borrowed funds.

[36 FR 24643, Dec. 22, 1971, as amended at 53 FR 11234, Apr. 5, 1988]

§ 236.55 Rental charges.

(a) *Approved rental charges.* The Commissioner will establish, and the mortgagor will maintain, a Basic Rent and Market Rent for each dwelling unit. On the basis of information that the mortgagor provides on a form prescribed by the Commissioner, the Commissioner will determine the rents for the project, using the sum of the project's operating costs and debt service (as calculated by the Commissioner), and the owner's return on investment, with adjustments for vacancies, the project's non-rental income, and other factors that the Commissioner deems appropriate.

(b) *Monthly Rental Charge.* Monthly rental charges shall be calculated as follows:

(1) *Tenant Rent for qualified tenants whose initial lease is effective on or after May 1, 1983.* The Tenant Rent payable by a Qualified Tenant shall be the greater of the Basic Rent or 30 percent of the tenant's Adjusted Monthly Income, but not more than the Market Rent. In the case of tenant paid utilities, the Utility Allowance may not reduce the Tenant Rent below 25 percent of Adjusted Monthly Income.

(2) *Tenant Rent for qualified tenants whose initial lease was effective before May 1, 1983.* The Tenant Rent shall be calculated in accordance with paragraph (b)(1) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(3) *Limitation on tenant's monthly rental payment.* In no event shall the monthly rental exceed the HUD-approved market rental.

(c) *Special Conditions.* (1) For purposes of this section, a family is considered to be a Qualified Tenant whose initial lease was effective before May 1, 1983 only if the family resided on April 30, 1983, in a unit under the Section 236 program paying a rent less than the Market Rent or in a unit receiving Rent Supplement assistance, and its participation in the programs at a below Market Rent (including receipt of Rent Supplement assistance) has been continuous thereafter; or a family that resided on July 31, 1982 in a unit with the benefit of Section 8 Housing Assistance Payments, and its participation in the Section 8, Rent Supplement, or Rental Assistance Payments Program has been continuous thereafter. A family shall not be disqualified if, after that date, it moved from one unit to another unit within the same project.

(2) So long as a Qualified Tenant whose initial lease was effective before May 1, 1983 continues to receive assistance in the same project, its Tenant Rent shall not be increased by more than 10 percent during any 12-month period as a result of (i) application of the percentages in paragraph (b)(2) of this section; and (ii) application of the revised definitions in §§ 236.2 and 236.3.

(3) So long as a Qualified Tenant whose initial lease was effective on or after May 1, 1983 but which was in occupancy on September 30, 1984, continues to receive assistance in the same project, its Tenant Rent shall not be increased by more than 10 percent during any 12-month period as a

result of application of the changes in the definitions contained in §§ 236.2 and 236.3 from definitions of comparable terms in regulations in effect immediately before October 1, 1984.

(4) For the purpose of paragraphs (c) (1) through (3) of this section, the "same project" includes units in buildings located on adjacent sites that are managed as one project.

(5) The limitations contained in paragraphs (c) (2) and (3) of this section do not apply to portions of increases in Tenant Rent that are attributable to increases in the Basic Rent or decreases in the Utility Allowance, or to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in paragraphs (c) (2) and (3) of this section.

(6) In order to facilitate administration of the limitations provided in paragraphs (c) (2) and (3) of this section, upon any regular or interim reexamination of a tenant who was in occupancy on September 30, 1984, the owner shall continue to collect and verify information that would have been taken into account in calculating Annual Income and Adjusted Income as defined in regulations in effect immediately before October 1, 1984, as if such regulations were in effect at the date of such reexamination.

(7) The limitations prescribed in paragraphs (c)(2) and (3) of this section shall be applied in accordance with procedures prescribed by HUD.

(d) *Adjustments in Utility Allowances.* When the project owner requests HUD approval of a rent increase, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption must be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances. (See 24 CFR Part 245 for the procedure for tenant comment in the rent increase process, which includes changes in the Utility Allowances.)

(e) *Application of terms.* In the case of a cooperative project, the term rent as used in this subpart shall mean the charges under the occupancy agreement of members of the cooperative.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0204; requirements contained in paragraph (a) are approved under control number 2502-0324; and requirements contained in paragraph (d) are approved under control numbers 2502-0352 and 2502-0354)

[41 FR 42950, Sept. 29, 1976, as amended at 43 FR 23568, May 31, 1978; 48 FR 13980, Apr. 1, 1983; 48 FR 16674, Apr. 19, 1983; 49 FR 29591, July 23, 1984; 51 FR 20273, June 4, 1986; 51 FR 21861, June 16, 1986]

§ 236.56 Determination of project feasibility—fair market rentals.

(a) In the determination of project feasibility prior to issuing a commitment for mortgage insurance under this part, the fair market rentals estimated in accordance with § 236.55(a)(2) shall be at a level that can be expected to attract nonsubsidized tenants, who will pay fair market rentals, and shall not exceed the rentals obtainable for reasonably comparable nonsubsidized rental dwelling units similarly located. Adjustments may be made in such rentals to reflect additional management services such as increased tenant screening, counseling, and income certification and recertifications.

(b) In determining the feasibility of a project to be located in a deteriorating residential neighborhood, the Commissioner may determine a project to be feasible with estimated fair market rental levels in excess of those than can be expected to attract nonsubsidized tenants in that neighborhood provided that:

(1) The estimated fair market rentals do not exceed estimated fair market rentals obtainable in comparable projects in more stable neighborhoods, and

(2) The proposed project can be expected to contribute to the stabilization or improvement of the neighborhood.

[37 FR 7157, Apr. 11, 1972]

§ 236.60 Excess rental charges.

The mortgagor shall agree to pay monthly to the Secretary the total of all rental charges collected in excess of the Basic Rent in accordance with instructions prescribed by the Secretary.

[51 FR 21861, June 16, 1986]

§ 236.65 Mortgagor's oath as to selection of tenants and transient occupancy.

The mortgagor shall certify under oath to the Commissioner, that as long as the Commissioner is the insurer, holder or reinsurer of the mortgage, the mortgagor will not:

(a) In selecting tenants for the project covered by the mortgage, discriminate against any family because there are children in the family.

(b) Rent, permit the rental or permit the offering for rental of the housing or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certificate, the term "rental for transient or hotel purposes" shall mean (1) rental for any period less than 30 days, or (2) except in the case of a project designed primarily for occupancy by elderly or handicapped persons, any rental which includes the provision of customary hotel services such as room service for food and beverages, furnishing and laundering of linens, maid service and bellboy service.

(c) Sell the project, unless the purchaser also agrees to comply with the requirements of paragraphs (a) and (b) of this section.

§ 236.70 Occupancy requirements.

(a)(1) In processing applications for admission, the housing owner will determine eligibility in accordance with procedures prescribed by the Commissioner, including those specified for the disclosure and verification of Social Security Numbers in part 200, subpart T, of this chapter.

(2) If the owner has units authorized to be assisted under a tenant-based subsidy program (e.g., Rent Supplement, Rental Assistance Payments, section 8 Loan Management Set-aside), the owner must use good faith efforts to fill units first with applicants eligible for that type of subsidy, provided that the number of units authorized for that subsidy would not be exceeded and provided that there is sufficient funding for the unit.

(3) In the selection of applicants when there is no tenant-based subsidy available or when good faith efforts to find eligible tenants have been unsuccessful, the owner must use good faith efforts to admit first applicants who are eligible to pay a below market rent, and then applicants who can pay the Market Rent.

(4) Before admitting an applicant who can pay Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the interest reduction contract are already occupied by tenants paying Market Rent.

(5) Before admitting an applicant who would not receive the benefit of a tenant-based subsidy, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the tenant-based subsidy contracts are already occupied by tenants receiving such assistance.

(6) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (a)(2) through (a)(5) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(b) *Projects designed for displacees, or elderly, or handicapped.* In a project designed for displacees, or elderly, or handicapped, occupancy may be restricted to that category of persons for whom the project was designed and who meet the income requirements established by the Commissioner.

(c) *Preference for military personnel and displacees.* (1) Whenever the Commissioner determines that a project, because of its location or other considerations, could ordinarily be expected to substantially serve the family needs of military personnel who are serving on active duty and meet the income requirements established by the Commissioner, such preference for occupancy shall be afforded to the family of such military person-

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nel as the Commissioner determines is appropriate.

(2) In all projects preference or priority to occupy dwelling units shall be given to displacees provided that in a project designed for the handicapped or the elderly, preference for displacees shall be limited to those who are within the category for whom the project was designed.

(Information collection requirements in paragraph (a) are approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0118)

[36 FR 24643, Dec. 22, 1971, as amended at 51 FR 21861, June 16, 1986; 51 FR 25688, July 16, 1986; 54 FR 39695, Sept. 27, 1989]

§ 236.72 Guidelines for assisted admission.

(a) *Maximum income.* The adjusted income of an applicant shall not exceed the maximum income limits established by the Secretary.

(b) *Ability to pay rent.* The project owner or his managing agent may, at his discretion, admit an applicant for assisted admission whose adjusted income meets the requirement in paragraph (a) of this section if, in his judgment, the applicant has an adequate income to pay the basic monthly rental charge. If the applicant's income appears inadequate, the factors listed below, in addition to the applicant's income, shall be taken into consideration in making a determination of whether he will be able to pay the basic monthly rental charge. The project owner or his managing agent shall maintain supporting written documentation for the decision to admit or reject an applicant for assisted admission based upon these factors.

(1) A local welfare or other agency has agreed to pay all or a portion of the basic monthly rental charge.

(2) The applicant is 62 years of age or older.

(3) The applicant is a qualified tenant on whose behalf the project owner will receive rent supplement payments under Part 215 of this title, or rental assistance payments under this part.

(4) The applicant has established a history of rent-paying ability at level equal to or greater than basic rent.

(5) The applicant has sufficient income, when considered together with other assets, to pay the basic monthly rental charge for a reasonable period.

(6) The applicant receives food stamps, surplus commodities or similar benefits that favorably affect the applicant's ability to pay rent.

(7) Such other factors as, in the judgment of the project owner or his managing agent, bear favorably upon the applicant's ability to pay rent.

(c) *Preference for applicants within lowest practicable income limits.* The project owner or his managing agent shall accord a preference to applicants for assisted admission whose incomes are within the lowest practicable income limits and who meet the requirements of paragraphs (a) and (b) of this section.

(d) *Projects utilizing income limitations in effect subsequent to August 22, 1974.* The preference provided for in paragraph (c) of this section is not applicable to projects utilizing income limitations in effect subsequent to August 22, 1974.

[39 FR 10559, Mar. 21, 1974, as amended at 40 FR 52845, Nov. 13, 1975; 49 FR 6715, Feb. 23, 1984]

§ 236.75 Form of lease and occupancy agreement.

(a) A tenant who is to pay less than the fair market rental shall be required to execute a lease in a form approved by the Commissioner. A cooperative member shall be required to execute an occupancy agreement in a form approved by the Commissioner.

(b) Lease clauses of the nature described below shall not be included in new leases or occupancy agreements covered by paragraph (a) of this section and shall be deleted from existing leases and agreements either by amendment thereof or execution of a new lease or agreement.

(1) *Confession of judgment.* Prior consent by the tenant: (i) To any lawsuit the landlord may bring against the tenant in connection with the

lease and (ii) to a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on the part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before actions for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right: (i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents or (ii) to file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

[48 FR 43313, Sept. 23, 1983]

§ 236.80 Reexamination of income.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) in accordance with § 236.55 or § 236.735, and determine whether the Qualified Tenant's unit size is still appropriate. The owner must adjust the Tenant Rent and the Rental Assistance Payment, if applicable, to reflect any change in Total Tenant Payment, and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(b) *Interim reexaminations.* The Qualified Tenant must comply with the provisions of its lease regarding interim reporting of changes in income or family composition. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Rental Assistance Payment or Tenant Rent must be verified. See 24 CFR 200.1015(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(c) *Termination of assistance.* A Qualified Tenant loses eligibility for assistance when the Tenant Rent (Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) equals the Basic Rent (Gross Rent for RAP tenants). The termination of eligibility at such point will not affect the Qualified Tenant's

other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance or eligibility to pay below Market Rent also may be terminated in accordance with any requirements of the lease or with HUD requirements, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0118)

[54 FR 39696, Sept. 27, 1989]

§ 236.81 Transition provision.

(a) *Admission and reexaminations effective on or after August 1, 1985.* All regular and interim reexaminations and examinations for admission that are to be effective on or after August 1, 1985, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the revisions to §§ 236.2, 236.3, 236.55 (or § 236.735, if applicable) scheduled to become effective August 1, 1985.

(b) *Optional interim reexamination.* To expedite use of the new calculations, each owner shall have the right, at its discretion, to require any Qualified Tenant who paid an assisted rent on or after October 1, 1984, that was based on the rule in effect before October 1, 1984, to undergo an interim reexamination and determination of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, in accordance with the revisions to §§ 236.3, 236.55, and 236.735 scheduled to become effective August 1, 1985, before the next regularly scheduled reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants, other than those whose examination for admission was based on the revisions to §§ 236.2, 236.3, 236.55 and 236.735 scheduled to become effective August 1, 1985, or who paid the Basic Rent, the owner shall make an additional calculation, at the first reexamination using the revised rule, with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) shall be calculated for such period, in accordance with HUD administrative instructions, on the basis of:

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984.

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 236.2;

(3) Medical Expenses and Handicapped Assistance Expenses as prescribed in the definition of Adjusted Income in § 236.2;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 236.2; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual adjustments.* (1) If the adjusted Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) calculated under paragraph (c) of this section is higher than or equal to the actual monthly Tenant Rent (or Total Tenant Payment) for the applicable period, no adjustment shall be made. If the adjusted monthly Tenant Rent (or Total Tenant Payment) calculated under paragraph (c) of this section is lower than the actual monthly Tenant Rent (or Total Tenant Payment) for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining balance is the amount due the tenant. This amount due the tenant may be paid to the tenant; or it may be applied as a

credit to the Total Tenant Payment or Tenant Rent, as appropriate, due immediately after the effective date of the reexamination; or, if the amount due to a tenant exceeds 25 percent of the Total Tenant Payment or Tenant Rent, as appropriate, due from such tenant, it may be applied as a credit in not more than four installments, as provided in HUD administrative instructions.

(2) If a Qualified Tenant vacates a unit on or after October 1, 1984, and before the first reexamination based on the revisions to §§ 236.2, 236.3, 236.55 and 236.735, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after the owner sends the notice) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amounts due from the tenant to the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the revisions to §§ 236.2, 236.3, 236.55 and 236.735, HUD will follow regular procedures appropriate to the circumstances.

[51 FR 21861, June 16, 1986]

§ 236.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations for Mortgage Insurance

§ 236.251 Cross-reference.

All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 236 of the National Housing Act except the following provisions:

Sec.

207.252 First, second, and third premiums.
207.252a Premiums—operating loss loans.
207.259 Insurance benefits.
207.262 No vested right in fund.

[37 FR 8664, Apr. 29, 1972, as amended at 42 FR 59675, Nov. 18, 1977]

§ 236.252 First, second, and third mortgage insurance premiums.

All of the provisions of § 207.252 of this chapter governing the first, second, and third mortgage insurance premiums shall apply to mortgages insured under this subpart, except:

(a) Where an application for a loan under section 202 of the Housing Act of 1959 has been filed previously in connection with the project, but it is being financed with a mortgage insured under this part because funds are not available to make the section 202 loan, the mortgage insurance premium due and payable between the dates of initial and final insurance endorsement shall be at the rate of one-fourth of one percent per annum of the average outstanding principal obligation of the mortgage and such premiums shall be prorated for any fractional part of a year. Following final endorsement, the mortgage insurance premium shall be increased to one-half of one percent and shall be paid as provided in § 207.252.

(b) Where a mortgage has been insured under this subpart pursuant to section 238(c) of the Act, the mortgage insurance premiums due in accordance with § 207.252 shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

§ 236.253 Premiums—operating loss loans.

All of the provisions of § 207.252a of this chapter relating to mortgage insurance premiums on operating loss loans shall apply to mortgages insured under this subpart, except that for mortgages insured pursuant to Section 238(c) of the Act the mortgage insurance premiums due in accordance with § 207.252a shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

§ 236.255 Forbearance relief.

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of the mortgagor's regular mortgage payments for a specified period of time, if the Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time. Such determination shall be evidenced by the Commissioner's written approval of the forbearance agreement.

(b) The time specified in § 207.258(a) of this chapter, within which a mortgagee shall give the Commissioner written notice of its intention to file an insurance claim, shall be suspended for the period of time specified in the forbearance agreement as long as the mortgagor complies with the requirements of such agreement.

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its election to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 236.265(b) shall be applicable.

§ 236.260 Request by Commissioner for assignment of mortgage.

The mortgagee shall, when requested by the Commissioner, assign to the Commissioner a mortgage on which interest reduction payments are being made pursuant to the provisions of § 236.501 et seq. If the mortgage is not in default when the Commissioner requests its assignment, the first day of the month following the Commissioner's request shall be considered the date of default.

§ 236.265 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except as follows:

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

(b) When the mortgage is assigned to the Commissioner pursuant to § 236.260 or is assigned in a case where the mortgagor fails to comply with the requirements of a forbearance agreement approved by the Commissioner in accordance with the requirements of § 236.255 or is assigned in a case where the mortgagor fails to cure the default at the expiration of the forbearance period, the insurance benefits shall be paid in cash and shall be computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, an amount shall be included equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the cash payment is made, except

that when the mortgagee fails to meet any one of the applicable requirements of §§ 207.256, 207.258(b), and 236.255(c) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such amount shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(c) Where the assignment of the mortgage is made pursuant to § 236.260 and the mortgage is not in default at the time of such assignment, the one percent deduction prescribed in § 207.259(b)(2)(iv) of this chapter shall not be applicable.

Subpart C—Interest Reduction Payments

§ 236.501 Interest reduction payments contract.

This subpart shall constitute the interest reduction payment contract between the mortgagee and the Commissioner with respect to a mortgage insured under section 236 of the National Housing Act. The endorsement of the mortgage for insurance shall constitute the execution of the interest reduction payment contract with respect to the mortgage being insured.

§ 236.505 Eligible mortgages.

Interest reduction payments pursuant to this subpart shall be made only in connection with a mortgage which is insured under Subparts A and B of this part.

§ 236.510 Term of payments.

(a) The term for which interest reduction payments shall be made shall begin on the following dates:

(1) With respect to a mortgage involving insurance of advances, on the date the Commissioner finally endorses the mortgage not for insurance or such earlier date as may be established by the Commissioner.

(2) With respect to a mortgage insured upon completion, the date on which the Commissioner endorses the mortgage note for insurance.

(b) The term of the interest reduction payments shall end upon the occurrence of one of the following events:

(1) The termination of the contract of insurance, except where the mortgage has been assigned to the Commissioner.

(2) The Commissioner's receipt of the mortgagee's notice of intention to file an insurance claim and to acquire and convey title to the Commissioner pursuant to § 207.258(c) of this chapter. In the event the mortgagee fails to provide the Commissioner with such notice of intention within the time specified in § 207.258(a) of this chapter, the last day on which the Commissioner should have received the mortgagor's notice shall be deemed the date the Commissioner receives such notice.

(3) At the discretion of the Commissioner, the mortgagor's failure to meet its obligations under the regulatory agreement it has entered into with the Commissioner.

(c) Upon termination of the interest reduction payments contract, the payment due on the first of the month in which the termination occurs shall be the last payment to which the mortgagee shall be entitled.

(d) Where the term of interest reduction payments is ended pursuant to paragraph (b) (2) or (3) of this section, such interest reduction payment contract may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, interest reduction payments will be made to the mortgagee for those months during which such payments were suspended.

§ 236.515 Time of payments.

The interest reduction payments shall be due on the first day of each month following the beginning of the term, and shall be paid upon the receipt of a billing (on a form prescribed by the Commissioner) from the mortgagee or its authorized agent.

§ 236.520 Amount of payments.

(a) The interest reduction payment to the mortgagee shall be in an amount not exceeding the difference between the following:

(1) The monthly installment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage; and

(2) The monthly payment for principal and interest the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 percent per annum.

(b) Where individual family units in the project are sold, subject to a plan approved by the Commissioner, and as the principal amount of the mortgage is reduced by payment of the portion of the mortgage attributable to the sold units and as the amount of the mortgage payments which the mortgagor is obligated to pay is reduced, proportionate reductions will be made in the interest reduction payments.

(c) In addition to the interest reduction payment referred to in paragraph (a) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the mortgagee for its expenses in servicing the mortgage.

§ 236.525 Application of payments.

The mortgagee shall apply each monthly interest reduction payment, together with the mortgagor's monthly payment, to the items and in the order set out in the mortgage.

§ 236.530 Mortgagee records.

The mortgagee shall maintain such records as the Commissioner may require with respect to the mortgagor's payments and the interest reduction payments received from the Commissioner. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or the Comptroller General of the United States.

§ 236.535 Effect of assignment of mortgage.

In the event a mortgage subject to interest reduction payments is assigned to another approved mortgagee, the assignee shall thereupon succeed to all the rights and obligations of the assignor under the interest reduction contract.

§ 236.599 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but no such amendment shall adversely affect the interests of a mortgagee under a contract for interest reduction payments already in effect or to be put into effect pursuant to the Commissioner's commitment to enter into such contract.

Subpart D—Rental Assistance Payments

SOURCE: 40 FR 31872, July 29, 1975, unless otherwise noted.

§ 236.701 Scope of rental assistance.

The Secretary shall enter into Rental Assistance Contracts with the owners of section 236 projects which:

(a) Had received a commitment for mortgage insurance under this part on or before August 22, 1974, but are reprocessed before final endorsement with rental assistance pursuant to an agreement between the sponsor and the Secretary;

(b) Had not received a commitment for mortgage insurance under this part on or before August 22, 1974, but did so subsequently;

(c) Had received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance and to be financed under a State or local government aided program pursuant to section 236(b) of the National Housing Act) on or before August 22, 1974, but are reprocessed with rental assistance pursuant to an Agreement between the sponsor, the State or local agency providing additional aid to the project, and the Secretary. Projects in this category which are converted from Rent Supplement shall have Rental Assistance Contracts with terms which do not exceed the unexpired terms of the Rent Supplement Contracts. Projects in this category which have no Rent Supplement Contract shall have Rental Assistance Contracts with terms which do not exceed the unex-

pired terms of Agreement for Interest Reduction Payments or equivalent documents or 40 years whichever is less; or

(d) Had not received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance) on or before August 22, 1974, but did so subsequently.

Projects may not receive the benefit of rent supplement payments under Part 215 of this Title and rental assistance payments at the same time. (Notwithstanding the provisions of this Subpart, it shall be a matter of the Secretary's discretion whether he enters into contracts for such benefits in connection with the sale of HUD-owned projects.) The conditions of eligibility for a Rental Assistance Contract and its terms are specified in this Subpart D.

[40 FR 31872, July 29, 1975, as amended at 45 FR 50734, July 31, 1980]

§ 236.705 Projects eligible for benefits.

(a) Rental assistance payments may be made with respect to section 236 projects with Rental Assistance Contracts pursuant to this subpart.

(b) Rental assistance payments to owners of projects pursuant to paragraph (a) of this section will normally be made available to 20 percent of the dwelling units, except that the Secretary may:

(1) Reduce that percentage in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(2) Increase that percentage in the case of any project if he determines: (i) That such action is necessary and feasible, after taking into account the objective of assuring, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or (ii) that such action is to be taken to meet the housing needs of elderly or handicapped families.

§ 236.710 Qualified tenant.

The benefits of rental assistance payments are available only to an individual or a family renting a dwelling unit in a project that is subject to a contract under this subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of subpart A. In order to receive rental assistance under this subpart, it must have been determined that the income of the individual or family is too low to permit the individual or family to pay the approved Gross Rent with 30 percent of such individual's or family's Adjusted Monthly Income, as defined in subpart A. For requirements concerning the disclosure and verification of Social Security Numbers, see part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0118)

[54 FR 39696, Sept. 27, 1989]

§ 236.715 Determination of eligibility.

(a) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner will determine eligibility following procedures prescribed by the Commissioner.

(b) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(1) First: Applicants eligible for Rental Assistance Payments;

(2) Second: Applicants eligible to pay a below market rent under Section 236;

(3) Third: Applicants who can pay the Market Rent.

(c) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the section 236 program are already occupied by tenants paying Market Rent.

(d) Before admitting an applicant who will not receive the benefit of Rental Assistance Payments, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under

the Rental Assistance Payments contract are already occupied by tenants receiving such assistance.

(e) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (b) through (d) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(Approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

[51 FR 21862, June 16, 1986]

§ 236.720 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rental assistance payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rental assistance payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Secretary.

(b) The term "tenant" as used in this Subpart shall include a member of a cooperative, and the term "rental payment" shall include the carrying charges under the occupancy agreement between the members of the cooperative and the cooperative housing owner.

§ 236.725 Term of contract.

The rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

§ 236.730 Maximum annual rental assistance contract amount.

The rental assistance contract shall specify the maximum amount of the rental assistance payments for the project for the rent-up period, or for any such other period of time as the Secretary may prescribe, based upon the Secretary's estimate of probable demand and tenant income, including a 10 percent contingency allowance. At the end of such period of time, and annually thereafter, appropriate adjustments, as the Secretary may prescribe, shall be made in the maximum annual rental assistance contract amount, to reflect the actual requirements of the eligible tenants and a 10 percent contingency allowance.

§ 236.735 Rental assistance payments and rental charges.

(a) *Amount of rental assistance payments.* The rental assistance contract shall provide that the payment on behalf of a Qualified Tenant shall not exceed the difference between the Gross Rent and the Total Tenant Payment.

(b) *Total tenant payment for qualified tenants who first receive rental assistance on or after May 1, 1983.* Notwithstanding § 236.55(b), the Total Tenant Payment payable for these Qualified Tenants shall be the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of Adjusted Monthly Income as defined in Subpart A;

(2) 10 percent of one-twelfth of Annual Income as defined in Subpart A;

(3) If the family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(3) shall be the amount resulting from one application of the percentage.

(c) *Total tenant payment for qualified tenants who were receiving rental assistance on April 30, 1983 and whose assistance has been continuous thereafter.* Notwithstanding § 236.55(b), the Total Tenant Payment for these Qualified Tenants shall be calculated in accordance with paragraph (b) of this section, except that instead of 30 percent, the percentage applied to Ad-

justed Monthly Income shall be as follows:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special conditions.* (1) For the purposes of this section, a Qualified Tenant whose initial lease was effective before May 1, 1983 includes the following: A Qualified Tenant that resided in a unit assisted under the Rental Assistance Programs or Rent Supplement Program on April 30, 1983, and whose assistance under those programs has been continuous thereafter; and a family that resided in a unit with the benefit of section 8 Housing Assistance Payments on July 31, 1982 and whose participation in the section 8, Rent Supplement or the Rental Assistance Payment Program has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit in the same project. For these purposes, units in buildings located on adjacent sites and managed as one project will be considered part of the same project even if they have separate project numbers and separate mortgages.

(2) Notwithstanding paragraphs (b) and (c) of this section, the Total Tenant Payment payable by a Qualified Tenant who continues to receive assistance in the same project shall not be increased by more than 10 percent during any 12-month period as a result of application of the percentages in paragraph (c) of this section, and application of the revised definitions in §§ 236.2 and 236.3. However, this 10 percent limit does not apply to Families subject to paragraph (b)(3) of this section, provided that the welfare agency includes as the housing component of the Family's grant an amount equal to their entire rent payment, without reduction. The Total Tenant Payment may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributable to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in this paragraph (d)(2).

(e) *Utility reimbursement.* Where applicable, the Utility Reimbursement shall be paid to the Qualified Tenant. If the tenant and the utility company consent, the owner may pay the Utility Reimbursement jointly to the Qualified Tenant and the utility company, or directly to the utility company.

[51 FR 21862, June 16, 1986]

§ 236.740 Time of payment under contract.

The rental assistance contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility.

§ 236.745 Tenant occupancy limitations.

Eligible tenants shall not be permitted to occupy units larger than the Secretary determines necessary for their family needs, except on a temporary basis with the approval of the Secretary.

§ 236.750 Form of lease.

(a) *Lease form.* Eligible tenants shall be required to execute a lease in a form approved by the Commissioner.

(b) *Prohibited lease provisions.* Lease clauses of the nature described below shall not be included in new leases or occupancy agreements covered by paragraphs (a) and (b) of this section and shall be deleted from existing leases and agreements either by amendment thereto or by execution of a new lease or agreement.

(1) *Confession of judgment.* Prior consent by the tenant:

(i) To any lawsuit the landlord may bring against the tenant in connection with the lease; and

(ii) To a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has de-

termined that tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on the part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before actions for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right:

(i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents; or

(ii) To file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

[51 FR 21863, June 16, 1986]

§ 236.755 Housing owner's obligation under contract to report tenant income increase.

The rental assistance contract shall contain a provision obligating the housing owner to notify the Secretary upon receiving a report from a tenant of an increase in the tenant's income resulting in the tenant's ability to pay the approved basic monthly rental (plus, where applicable, the utility allowance established for utility charges paid by the tenant) with the amount the tenant is required to pay for rent in accordance with § 236.735. The contract shall also obligate the housing owner, upon failing to notify the Secretary when a report of such increases in income is received from a tenant, to reimburse the Secretary for any rental assistance payments made during the period following receipt of such report when the tenant is receiving the increased income.

[48 FR 13982, Apr. 1, 1983]

§ 236.760 Change in tenant income status.

Appropriate adjustments will be made in rental assistance payments to reflect changes in income or other circumstances which are reported by a tenant and verified or are shown by the annual tenant income recertification, as required by § 236.80. Rental assistance payments will be discontinued when it is determined by the Secretary that the amount the tenant is required to pay for rent, in accordance with § 236.735, is sufficient to pay the approved basic monthly rental (plus, where applicable, the established utility allowance) for the unit occupied by the tenant. Where a tenant is no longer entitled to rental assistance payments, he/she may continue to occupy the unit. The rents charged for the unit shall not exceed those specified in Subpart A.

[48 FR 13982, Apr. 1, 1983]

Subpart E—Audit of State and Local Governments

§ 236.901 Audit.

Where a State or local government receives interest reduction payments under section 236(b) of the National Housing Act, it shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

[50 FR 39091, Sept. 27, 1985, and 51 FR 30480, Aug. 27, 1986]

PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

Subpart A—Eligibility Requirements

Sec.
237.1 Scope of subpart.
237.5 Cross-reference.
237.15 Credit requirements.
237.20 Eligible property.
237.25 Income criteria.
237.30 Maximum mortgage amount.

WAIVERS

237.248 Waivers.

Subpart B—Contract Rights and Obligations

237.251 Cross-reference.
237.260 Method of paying insurance benefits.

Subpart C—Assistance Payments—Homes for Low and Moderate Income Families

237.301 Cross-reference.
237.305 Application for assistance payments.
237.310 Execution of assistance payment contract.

Subpart D—Servicing Responsibilities

237.400 Cross-reference.

AUTHORITY: Secs. 203, 211, 237, National Housing Act (12 U.S.C. 1709, 1715b, 1715z-2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24648, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 237.1 Scope of subpart.

Mortgage insurance under section 237 of the National Housing Act is provided under this section for mortgages financing the purchase of a single family home by a low or moderate income family that is unable to meet the credit requirements for mortgages insured under section 203, 220, 221, or 234 of the Act, if the mortgage meets the special requirements of this subpart.

§ 237.5 Cross-reference.

To be eligible for insurance under this subpart, a mortgage must meet all of the eligibility requirements for insurance under Part 203, Subpart A of this chapter; or under Part 220, Subpart A of this chapter; or under Part 221, Subpart A of this chapter; or under Part 234, Subpart A of this chapter, except that in addition to meeting such eligibility requirements, the mortgage must comply with the special requirements of this subpart. Mortgages and loans processed under the Direct Endorsement program set forth in § 200.163, mortgages insured on Hawaiian home lands or Indian land pursuant to section 247 or 248 of the National Housing Act or mortgages insured under section 203(b) of the Act as modified by section 203(q), are not eligible under this subpart.

[52 FR 48205, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

§ 237.15 Credit requirements.

The mortgage shall be executed by a mortgagor who the Commissioner has determined would not be an acceptable credit risk for mortgage insurance purposes under one of the subparts referred to in § 237.5, but who would be a reasonably satisfactory credit risk and acceptable for insurance under this subpart. The determination of unacceptability for mortgage insurance under one of the referenced subparts shall be based on the mortgagor's credit standing, debt obligations, total annual income, or income characteristics. The determination of acceptability for mortgage insurance under this subpart shall be based on a finding by the Commissioner that the mortgagor should be able to meet his obligations under the insured mortgage if he receives budget, debt management, and related counseling.

§ 237.20 Eligible property.

The mortgage shall be given to finance the purchase of a single family dwelling or a family unit in a condominium.

§ 237.25 Income criteria.

The mortgage shall be executed by a mortgagor who meets the income criteria established by the Commissioner for low and moderate income families.

§ 237.30 Maximum mortgage amount.

The mortgage shall not exceed the smallest of the following amounts:

(a) The applicable dollar limits of the subpart under which the mortgage would otherwise be eligible for insurance.

(b) $18,000 or $21,000 in any geographical area where the Commissioner finds that cost levels so require.

(c) A principal amount which when amortized will result in monthly payments consisting of principal, interest, mortgage insurance premiums and estimated real estate taxes, and aggregate of which will not exceed 25 percent of the mortgagor's income. For the purposes of determining such 25 percent, the mortgagor's income shall be computed either as his average monthly income during the year prior to the date of the application for mortgage insurance or as his average monthly income during the 3 years prior to such application, whichever amount is the greater.

WAIVERS

§ 237.248 Waivers.

The Secretary in any individual case may waive any requirement of Subparts A and C of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35960, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations

§ 237.251 Cross-reference.

(a) Mortgages insured under section 237 of the Act shall be governed by the provisions covering contract rights and obligations, as they respectively relate to the several mortgage insurance programs set forth in § 237.1, except that the foregoing regulations concerning mutuality of an insurance fund shall not apply and the mortgage insurance shall be the obligation of the Special Risk Insurance Fund.

(b) For the purposes of this subpart, all of the references in §§ 203.251 et seq. (Part 203, Subpart B) of this chapter; §§ 220.251 et seq. (Part 220, Subpart B) of this chapter; §§ 221.251 et seq. (Part 221, Subpart B) of this chapter; or §§ 234.251 et seq. (Part 234, Subpart B) of this chapter to:

(1) Section 203, 220, 221, or 234 of the Act shall be construed to refer to section 237 of the Act.

(2) The Mutual Mortgage Insurance Fund or the General Insurance Fund shall be construed to refer to the Special Risk Insurance Fund, except that the one-time mortgage insurance premium provisions in § 203.259a and in §§ 203.280 through 203.283 of this chapter shall not be construed to apply to this subpart.

[36 FR 24648, Dec. 22, 1971, as amended at 42 FR 29306, June 8, 1977; 48 FR 28807, June 23, 1983]

§ 237.260 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

Subpart C—Assistance Payments—Homes for Low and Moderate Income Families

§ 237.301 Cross-reference.

(a) All of the provisions of Subpart C, Part 235 of this chapter concerning assistance payments for lower income families apply to assistance payments for mortgages insured under section 237 of the National Housing Act, except the following provisions:

Sec.

235.310 Execution of assistance payment contract.
235.325 Qualified cooperative members.

Sec.
235.330 Cooperative units eligible for assistance payments.

(b) For the purposes of this subpart, all references in Part 235 of this chapter to:

(1) Section 235 of the Act shall be construed to refer to section 237 of the Act.

(2) This subpart shall be construed to refer to Subpart C of this Part 237.

(3) Subparts A and B of this part shall be construed to refer to Subparts A and B of this Part 237.

§ 237.305 Application for assistance payments.

Any approved mortgagee may submit, on a form prescribed by the Commissioner, an application for assistance payments in accordance with the provisions of this subpart.

§ 237.310 Execution of assistance payment contract.

The issuance of a mortgage insurance certificate pursuant to § 237.1 et seq. shall also constitute the execution of the contract for assistance payments with respect to the mortgage being insured, if the mortgagor has applied for such assistance payments.

Subpart D—Servicing Responsibilities

§ 237.400 Cross-reference.

Mortgages insured under section 237 of the National Housing Act shall be governed by the provisions of the regulations covering servicing responsibilities as they respectively relate to the several mortgage insurance programs set forth in § 237.1.

[42 FR 29306, June 8, 1977]

PART 238—YIELD INSURANCE [SEC. 702]

Subpart A—Eligibility Requirements

APPROVAL OF INVESTORS

Sec.
238.1 Classification of investors.
238.2 Withdrawal of approval.

APPLICATION AND COMMITMENT

238.3 Submission of application.
238.4 Form of application.
238.5 Application and commitment fee.
238.6 Inspection fee.
238.7 Approval of application.

ELIGIBLE PROJECTS

238.8 Project eligibility requirements.

RENTS

238.9 Rental schedule.
238.10 Charges in addition to maximum rental.

TITLE

238.11 Title.

Subpart B—Contract Rights and Obligations

238.251 Definitions.
238.252 Premiums.
238.253 Contract of insurance.
238.254 Excess earnings.
238.255 Supervision of investor.
238.256 Payment of claims.
238.257 Debentures.
238.258 Termination and reinstatement of contract of insurance.
238.259 Amendment of regulations.
238.260 Effective date.

AUTHORITY: Sec. 712, 62 Stat. 1281, as amended; 12 U.S.C. 1747k.

SOURCE: 36 FR 24649, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

APPROVAL OF INVESTORS

§ 238.1 Classification of investors.

Such of the following may become an approved investor as the Commissioner shall find to be qualified by business experience and facilities to afford assurance of the necessary continuity of long-term investment and to have available the necessary capital required for long-term investment in the project and shall approve as eligible for insurance under Title VII of the National Housing Act:

(a) Any natural person;

(b) Any group of not more than ten natural persons;

(c) Any corporation, company, association, trust or other legal entity; or

(d) Any combination of two or more corporations, companies, associations, trusts or other legal entities having all the powers necessary to comply with the requirements of such title.

§ 238.2 Withdrawal of approval.

Approval of an investor may be withdrawn by notice from the Commissioner at any time for cause deemed sufficient by the Commissioner, but no withdrawal will affect any commitment or contract of insurance theretofore entered into with such investor.

Application and Commitment

§ 238.3 Submission of application.

Any approved investor may submit an application for insurance in connection with an investment which it proposes to make pursuant to the provisions of Title VII of the National Housing Act.

§ 238.4 Form of application.

The application must be made upon a standard form prescribed by the Commissioner and filed at the local Federal Housing Administration office serving the area in which the property is located.

§ 238.5 Application and commitment fee.

The application must be accompanied by the investor's check to cover an application fee computed at the rate of $150 per $1,000 of the estimated investment stated in the application, to cover the cost of analysis by the Commissioner, and at the time of delivery of the commitment a further sum (referred to as commitment fee) shall be paid, which, when added to the application fee, will aggregate $3.00 per $1,000 of the estimated investment as specified in the commitment. If the application is refused as a result of preliminary examination by the Commissioner, the fee paid will be returned to the applicant, but no portion of the fee will be returned after further work has been performed following preliminary examination. If the amount of established investment is increased after insurance, the fees herein provided for shall be based upon the amount of such increase.

§ 238.6 Inspection fee.

An inspection fee computed at the rate of $2.00 per $1,000 of the face amount of the commitment shall be paid as provided for in the commitment.

§ 238.7 Approval of application.

Upon approval of an application a commitment will be issued upon a form approved by the Commission setting forth the terms and conditions upon which the insurance will be granted.

Eligible Projects

§ 238.8 Project eligibility requirements.

To be eligible for insurance, a project shall meet the following conditions:

(a) The Commissioner shall be satisfied that there is in the locality or metropolitan area of such project a need for new rental dwellings at rents comparable to the rents proposed to be charged for the dwellings in such project.

(b) The project shall be economically sound and shall contain at least twenty-five (25) dwelling units.

(c) The dwellings in such project shall be acceptable to the Commissioner as to quality, design, size and type.

(d) The investor shall establish in a manner satisfactory to the Commissioner that good and merchantable title in fee simple or under long-term leasehold (under a lease having a term of not less than 99 years which is renewable or under a lease having not less than 60 years to run from the date of commitment to insure under Title VII of the act is executed) satisfactory to the Commissioner to the real estate to be included in the project is vested in the investor free and clear of liens and will so remain as long as the contract of insurance remains in force, and after completion of the project, the investor must establish that there are no outstanding unpaid obligations contracted in connection with the construction or completion of the project, except taxes and such other liens and obligations as may be approved or prescribed by the Commissioner. Debentures issued by the investor which are payable out of net income from the project and from the benefits of the insurance contract shall not be construed as "unpaid obligations" as such term is used in this paragraph.

(e) The project may include, in addition to the dwellings, such stores, com-

mercial or community facilities as the Commissioner shall determine to be necessary or desirable appurtenances to the project.

(f) The investor shall establish in a manner satisfactory to the Commissioner that it has and will make available sufficient funds to complete the project in accordance with the plans and specifications approved by the Commissioner.

(g) An investor must establish that no restriction upon the sale or occupancy of the project, on the basis of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950, and must certify that so long as the insurance contract remains in force he will not file for record any restriction affecting the project or execute any agreement, lease, or conveyance affecting the project which imposes any such restriction upon its sale or occupancy.

(h)(1) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of the contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(3) No project shall be eligible for insurance unless subsequent to completion of construction there is filed a certificate, executed by the general contractor, in the form required by the Commissioner, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(Sec. 7(d), Department of HUD Act; 42 U.S.C. 3535(d))

[36 FR 24649, Dec. 22, 1971, as amended at 49 FR 45127, Nov. 15, 1984]

Rents

§ 238.9 Rental schedule.

No charge shall be made by the investor for the dwelling accommodations offered by the project in excess of that provided in a rental schedule to be filed with the Commissioner and approved by him or his duly constituted representative prior to the opening of the project for rental: *Provided*, That in no event shall the rent proposed to be charged or collected for any dwelling in the project, including charges for heat and other customary services as determined by the Commissioner, exceed $120 per month, nor shall the average rental for all dwellings in the project exceed $100 per month.

§ 238.10 Charges in addition to maximum rental.

The established maximum rental shall be the maximum authorized charge against any tenant for the dwelling accommodations offered exclusive of telephone, gas, electric, and refrigeration services. Charges in addition to such maximum rental may be made against a tenant for telephone, gas, electric, refrigeration, and other facilities and privileges furnished by the investor, but only with the approval of the Commissioner. No additional amounts may be required from a tenant in the nature of security deposits as a condition to occupancy of such units without the prior approval of the Commissioner.

Title

§ 238.11 Title.

At the time the contract of insurance is executed, the investor shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance as provided in paragraph (a) of this section: *Provided, however*, That in the event the inves-

tor is unable to furnish such policy for reasons satisfactory to the Commissioner the investor, without expense to the Commissioner, shall furnish evidence of title as prescribed in paragraphs (b), (c) or (d) of this section as the Commissioner may require.

(a) An owner's policy of title insurance issued by a company satisfactory to the Commissioner in such form and amount as may be approved by the Commissioner. Such policy shall run to the investor and the Commissioner as their respective interests may appear and may contain such exceptions, restrictions and limitations as are approved by the Commissioner.

(b) An abstract of title satisfactory to the Commissioner prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner as to the quality of such title signed by an attorney experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America or of any State or Territory thereof.

EFFECTIVE DATE

§ 238.12 Effective date.

The administrative rules in this subpart are effective as to all projects on which a commitment to insure under Title VII is issued on or after November 12, 1948.

Subpart B—Contract Rights and Obligations

§ 238.251 Definitions.

As used in this subpart, the following terms shall have the meanings respectively ascribed to them below, and unless the context clearly indicates otherwise, shall include the plural as well as the singular number.

(a) The term "Commissioner" shall mean the Federal Housing Commissioner.

(b) The term "act" shall mean the National Housing Act, as amended.

(c) The term "contract of insurance" shall mean the written instrument duly executed by the Commissioner and the investor, setting forth the terms, conditions and provisions of insurance.

(d) The term "investor" shall mean the insured named in the contract of insurance and shall include any assignee, pledgee or transferee of the insured which has been approved by the Commissioner and which is entitled to receive the benefits of the insurance contract.

(e) The term "project" shall mean a project (including all property, real and personal, contracts, rights and choses in action acquired, owned or held by the investor in connection therewith) of an investor designed and used primarily for the purpose of providing dwellings, the occupancy of which is permitted by the investor in consideration of agreed charges, and may include such stores, offices, commercial, community or other facilities as the Commissioner may approve.

(f) The term "estimated investment" shall mean the estimated cost of the development of the project as stated in the application submitted to the Commissioner for insurance under Title VII of the act and the regulations in this subpart.

(g) The term "establishment investment" shall mean the amount of the reasonable costs as approved by the Commissioner, incurred by the investor in, and necessary for carrying out all works and undertakings for the development of the project, and shall include the premium charge for the first operating year and the cost of all necessary surveys, plans and specifications, architectural, engineering, or other special services (land acquisition, site preparation, construction and equipment; a reasonable return on the funds of the investor paid out in the course of the development of the project up to, and including, the initial occupancy date; necessary expenses in connection with the initial occupancy of the project; and the cost of such items as the Commissioner shall determine to be necessary for the development of the project:

(1) Less the amount by which the rents and revenues derive from the

project up to, and including, the initial occupancy date exceeded the reasonable and proper expenses as approved by the Commissioner, incurred by the investor in, and necessary for, operating and maintaining said project up to, and including, the initial occupancy date, or

(2) Plus the amount by which such expenses exceeded such rents and revenues as the case may be: *Provided,* That the amount of the established investment so determined and approved by the Commissioner as of the date of initial occupancy of the project shall be subject to adjustment from time to time pursuant to the authority contained in section 712 of the act, and in accordance with the regulations in this subpart, to provide for increases, in such amounts as the Commissioner determines, if the investor makes capital improvements or additions to the project, or to provide for decreases, in such amounts as the Commissioner determines, if any part of the project is sold or transferred.

(h) The term "physical completion date" shall mean the last day of the calendar month in which the Commissioner determines that the construction of the project is substantially completed and substantially all of the dwellings therein are available for occupancy.

(i) The term "initial occupancy date" shall mean the last day of the calendar month in which 90 percent in number of the dwellings in the project on the physical completion date shall have been occupied, but shall in no event be later than the last day of the sixth calendar month next following the physical completion date.

(j) The term "operating year" shall mean the period of 12 consecutive calendar months next following the initial occupancy date and each succeeding period of 12 consecutive calendar months, and the period of the first 12 consecutive calendar months next following the initial occupancy date shall be the first operating year.

(k) The term "gross income" for any operating year shall mean the total rents and revenues and other income derived from, or in connection with, the project during such operating year.

(l) The term "operating expenses" for any operating year shall mean the amounts, as approved by the Commissioner, necessary to meet the reasonable and proper costs of, and to provide for, operating and maintaining the project, and to establish and maintain reasonable and proper reserves for repairs, maintenance, and replacements, and other necessary reserves during such operating year, and shall include necessary expenses for real estate taxes, special assessments premium charges made pursuant to Title VII of the act and the regulations in this part, administrative expenses, the annual rental under any lease pursuant to which the real property comprising the site of the project is held by the investor, and insurance charges together with such other expenses as the Commissioner shall determine to be necessary for the proper operation and maintenance of the project, but shall not include income taxes.

(m) The term "net income" for any operating year shall mean gross income remaining after the payment of the operating expenses.

(n) The term "minimum annual amortization charge" shall mean an amount equal to 2 percent of the established investment, except that in the case of a project where the real property comprising the site thereof is held by the investor under a lease, if (notwithstanding the proviso of § 238.252) the gross income for any operating year shall be less than the amount required to pay the operating expenses (including the annual rental under such lease), the minimum annual amortization charge for such operating year shall mean an amount equal to 2 percent of the established investment plus the amount of the annual rental under such lease to the extent that the same is not paid from the gross income.

(o) The term "annual return" for any operating year shall mean the net income remaining after the payment of the minimum annual amortization charge.

(p) The term "insured annual return" shall mean an amount not to exceed 2¾ percent per annum on the outstanding investment and shall be

fixed in the commitment to insure or in the contract of insurance.

(q) The term "minimum annual return" for any operating year shall mean an amount equal to 3½ percent of the outstanding investment for such operating year or such lesser amount as shall be agreed upon by the investor and the Commissioner.

(r) The term "excess earnings" for any operating year shall mean the net income derived from the project in excess of the minimum annual amortization charge and the minimum annual return and income taxes.

(s) The term "outstanding investment" for any operating year shall mean the established investment less an amount equal to:

(1) The aggregate of the minimum annual amortization charge for each preceeding operating year plus

(2) The aggregate of the excess earnings, if any, during each preceding operating year applied, in addition to the minimum annual amortization charge, to amortization in accordance with the provisions of § 238.254:

Provided, That the outstanding investment for any operating year shall be subject to adjustment in such amounts as the Commissioner determines, pursuant to the authority contained in section 712 of the act and the regulations in this subpart, to provide for a reduction in such outstanding investment for any operating year pending the restoration of damage to the project caused by fire, flood, earthquake, tornado or other casualty.

§ 238.252 Premiums.

(a) The investor shall pay to the Commissioner an annual insurance premium in an amount equal to one-half of 1 percent of the outstanding investment for the operating year for which such premium charge is payable without taking into account the excess earnings, if any, applied, in addition to the minimum amortization charge, to amortization of the outstanding investment. Such premium charge shall be payable annually in advance by the investor either in cash or debentures issued by the Commissioner under Title VII of the act at par plus accrued interest: *Provided,* That if in any operating year the gross income shall be less than the operating expenses, the premium charge payable during such operating year shall be waived, but only to the extent of the amount of the difference between such expenses and such income and subject to subsequent payment out of any excess earnings as provided in § 238.254.

(b) The first premium covering the first operating year shall be payable on the date the contract of insurance is executed and subsequent annual premiums shall be paid on or before the first day of each succeeding operating year until the project is acquired by the Commissioner or until the contract of insurance is otherwise terminated as set forth in § 238.258. At the close of each operating year the premium payable in advance for such operating year may be adjusted to take into account any increase or decrease in the outstanding investment for such operating year pursuant to the authority contained in section 712 of the act and the regulations in this subpart and any excess premiums collected shall be refunded to the investor and any deficiencies in the amount of the premium already collected and the amount found to be due for such operating year shall be paid by the investor.

§ 238.253 Contract of insurance.

Upon compliance satisfactory to the Commissioner with the terms of the commitment to insure, the Commissioner and the investor shall execute the contract of insurance. The Commissioner and the investor shall thereafter be bound by the contract of insurance, subject to the provisions of the regulations in this subpart which shall form part of each such contract. Any or all rights, claims or other benefits under the provisions of the insurance contract may be assigned, pledged or otherwise transferred upon such terms and conditions as may be approved by the Commissioner and agreed upon by an instrument in writing executed by the original investor and by an assignee, pledgee, or other transferee satisfactory to the Commissioner.

§ 238.254 Excess earnings.

For all of the purposes of any insurance contract, 50 percent of the excess earnings, if any, for any operating year may be applied, in addition to the minimum annual return, to return on the outstanding investment but only to the extent that such application thereof does not result in an annual return of more than 5 percent of the outstanding investment for such operating year, and the balance of any such excess earnings shall be applied, in addition to the minimum annual amortization charge, to amortization of the outstanding investment: *Provided,* That if in any preceding operating years the gross income shall have been less than the operating expenses, such excess earnings shall be applied to the extent necessary in whole or in part, first, to the reimbursement of the amount of the difference between such expenses (exclusive of any premium charges previously waived under § 238.252) and such income, and second, to the payment of any premium charges previously waived hereunder.

§ 238.255 Supervision of investor.

(a) *Maintenance of books and records.* The investor shall establish and maintain such books, records and accounts with respect to the insured project as may be prescribed by the Commissioner and will in the judgment of the Commissioner, adequately and accurately reflect the condition and operations of the project. The investor shall agree to permit the Commissioner or his agent at all reasonable times upon request to examine any and all books, records, contracts, documents, and accounts of the investor which reflect in any way the condition or operations of the project.

(b) *Financial and operating statements.* With respect to each project, the contract of insurance shall provide that after the close of each operating year the investor shall submit to the Commissioner for approval a financial and operating statement covering such operating year in such form as the Commissioner may prescribe. If any such financial and operating statement shall not have been submitted or, for proper cause, shall not have been approved by the Commissioner, payment of any claim submitted by the investor may, at the option of the Commissioner, be withheld, in whole or in part, until such statement shall have been submitted and approved.

(c) *Special information and reports.* The investor shall furnish, at the request of the Commissioner or his agent, specific answers to questions upon which information is desired from time to time relating to the income, assets, liabilities, contracts, operation, rents, or condition of the property and any other information with respect to the investor or the project which may reasonably be required.

(d) *Rents to conform with rental schedule.* The investor shall charge and collect rents for the dwelling units in the project only in accordance with a rent schedule approved by the Commissioner. No change therein nor additional requirements in the nature of security deposits as a condition to occupancy of such units shall be made by the investor without the prior approval of the Commissioner.

(e) *Increases and decreases in established investment.* No capital expenditure for additions or improvements which would have the effect of increasing the established investment or no sale of any portion of the project which would have the effect of reducing the established investment shall be made without the prior written approval of the Commissioner. In no event shall the investor mortgage or pledge all or any part of the project as security for any debt so long as the contract of insurance remains in force.

§ 238.256 Payment of claims.

If in any operating year the net income of a project is less than the aggregate of the minimum annual amortization charge and the insured annual return, the Commissioner, upon submission by the investor of a claim for the payment of the amount of the difference between such net income and the aggregate of the minimum annual amortization charge and the insured annual return, and after proof of the validity of such claim, shall pay to the investor in cash from the General In-

surance Fund the amount of such difference as determined by the Commissioner, but not exceeding in any event an amount equal to the aggregate of the minimum annual amortization charge and the insured annual return.

§ 238.257 Debentures.

(a) *Commissioner's right to acquire project.* If the aggregate of the amounts paid to the investor pursuant to § 238.256 shall at any time equal or exceed 15 percent of the established investment, the Commissioner thereafter shall have the right, after written notice to the investor of his intention so to do, to acquire, as of the first day of the operating year after such notice is given, such project in consideration of the issuance and delivery to the investor of debentures having a total face value equal to 90 percent of the outstanding investment for such operating year. In any such case, the investor shall be obligated to transfer and convey to the Commissioner good and merchantable title to the project undamaged by fire, earthquake, flood, tornado, or waste, and free and clear of all liens, encumbrances, and defects, except such as were approved by the Commissioner at the time the project was insured or may be approved by him at the time of such transfer, and shall furnish to the Commissioner satisfactory continuation of the title evidence approved at the time of insurance to, and including, the transfer to the Commissioner without cost to him. In the event the investor fails to meet the obligation described in the preceding sentence, the Commissioner may, at his option, terminate the insurance contract.

(b) *Investor's right to convey project to Commissioner.* If in any operating year the aggregate of the differences between the operating expenses (exclusive of any premium charges previously waived under § 238.252) and the gross income for the preceding operating years, less the aggregate of any deficits in such operating expenses reimbursed from excess earnings as provided in § 238.254, shall at any time equal or exceed 5 percent of the established investment, the investor shall thereafter have the right, after written notice to the Commissioner of his intention so to do, to convey the project to the Commissioner as of the first day of the operating year after such notice is given, and to receive from the Commissioner debentures having a total face value equal to 90 percent of the outstanding investment for such operating year. In any case, the investor shall be obligated to transfer and convey to the commissioner good and merchantable title to the project, undamaged by fire, earthquake, flood, tornado, or waste, and free and clear of all liens, encumbrances and defects, except such as were approved by the Commissioner at the time the project was insured or may be approved by him at the time of such transfer, and shall furnish the Commissioner satisfactory continuation of the title evidence approved at the time of insurance to, and including, the transfer to the Commissioner without cost to him.

(c) *Waste.* The term "waste" as used in paragraphs (a) and (b) of this section means permanent or substantial injury caused by unreasonable use or abuse, and is not intended to include damage caused by ordinary wear and tear.

(d) *Effect of Commissioner's acquisition of project.* Upon the acquisition of a project by the Commissioner pursuant to this section, the insurance contract shall terminate.

(e) *Date and term of debentures.* The debentures issued under Title VII of the act to any investor shall be issued in accordance with the provisions of section 708 of the act, shall be dated as of the first day of the operating year in which the project for which such debentures were issued was acquired by the Commissioner, shall bear interest at the rate of 2¾ percent per annum, payable semi-annually on the first day of January and the first day of July of each year, and shall mature on the first day of July in the twentieth year following the date of issuance thereof. Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed at the option of the Commissioner with the approval of the Secretary of the Treasury at par and accrued interest on any interest payment date on 3 months' notice

of redemption given in such manner as the Commissioner shall prescribe. Such debentures shall be issued in multiples of $50 and any difference not in excess of $50 between the amount of debentures to which the investor is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the investor.

§ 238.258 Termination and reinstatement of contract of insurance.

(a) *Termination of insurance contract at investor's option.* The investor, after written notice to the Commissioner of his intention to do so, may terminate, as of the close of any operating year in which such notice is given, any contract of insurance, upon payment to the Commissioner of an adjusted premium charge of 1 percent of the established investment but not in excess of the aggregate amount of the premium charges which the investor otherwise would have been required to pay if such contract of insurance had not been so terminated.

(b) *Termination of insurance contract at Commissioner's option.* The Commissioner may, at his option, terminate any insurance contract in the event that:

(1) The investor fails or refuses for a period of 30 days after receipt of a demand by the Commissioner to pay insurance premiums in accordance with the provisions of § 238.252.

(2) The investor sells or transfers all or any part of the project without the approval of the Commissioner.

(3) The investor fails or refuses to comply with the requirements and submit to the supervision of the Commissioner in the manner and to the extent prescribed in § 238.255.

(c) *Reinstatement of insurance contract.* Upon application by the investor and compliance with such terms and conditions as may be required by the commissioner in connection with the particular transaction any contract of insurance terminated pursuant to paragraph (b) of this section may be reinstated, subject to the investor making payment to the Commissioner of an amount equal to the insurance premiums which would have been due and payable if the contract of insurance had not been terminated.

(d) *Expiration of insurance contract.* Any insurance contract shall expire as of the first day of the operating year for which the outstanding investment amounts to not more than 10 percent of the established investment.

§ 238.259 Amendment of regulations.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured or to be insured on which the Commissioner has made a commitment to insure.

§ 238.260 Effective date.

The regulations in this subpart shall be effective as to all contracts of insurance or commitments to insure issued subsequent to the date hereof.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

Subpart A—Eligibility Requirements

Sec.
240.1 Incorporation by reference.
240.5 Maximum loan amounts.
240.10 Use of proceeds.
240.15 Nature of property.
240.16 Mortgage provisions.
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WAIVERS

240.248 Waivers.

Subpart B—Contract Rights and Obligations

240.251 Incorporation by reference.

Subpart C—Servicing Responsibilities

240.400 Cross-reference.

AUTHORITY: Secs. 211, 240, National Housing Act (12 U.S.C. 1715b, 1715z-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—Eligibility Requirements

§ 240.1 Incorporation by reference.

A mortgage for the purchase of fee simple title which meets the requirements of this subpart and Subpart A of Part 203, except as modified by § 240.1 et seq., shall be eligible for insurance under section 240 of the National Housing Act, except the following provisions:

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203.14 Builder's warranty.
203.15 Certification of appraisal amount.
203.16a Mortgagor and mortgagee requirement for maintaining insurance coverage.
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.23 Mortgagor's payments to include other charges.
203.24 Application of payments.
203.26 Mortgagor's payments when mortgage is executed.
203.28 Economic soundness of project.
203.32 Mortgage lien.
203.37 Nature of title to realty.
203.38 Location of dwelling.
203.39 Standard for buildings.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.45 Eligibility of graduated payment mortgages.
203.46 Eligibility of modified graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.
203.51 Negotiated interest rate.

[45 FR 33969, May 21, 1980, as amended at 45 FR 76401, Nov. 18, 1980; 47 FR 16779, Apr. 20, 1982; 51 FR 21875, June 16, 1986; 52 FR 8070, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48205, Dec. 21, 1987; 53 FR 8886, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988]

§ 240.5 Maximum loan amounts.

The loan shall not exceed:

(a) The cost of purchasing the fee simple title or $10,000 ($30,000 if the property is located in Hawaii) per family unit, whichever is the lesser; or

(b) An amount which when added to any outstanding indebtedness related to the property, as determined by the Commissioner, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 203.18(a)(1), (b), and (c), 203.18a, and 203.18b of this chapter as applicable.

[44 FR 26073, May 4, 1979 and 45 FR 76401, Nov. 18, 1980]

§ 240.10 Use of proceeds.

The proceeds of the loan shall be used only by homeowners to finance the purchase of the fee simple title to property on which their homes are located.

[36 FR 24653, Dec. 22, 1971]

§ 240.15 Nature of property.

To be eligible for insurance, the loan must relate to property on which there is located a dwelling designed principally for a one-, two-, three- or four-family residence, and which prior to the purchase of the fee simple title is being leased by the borrower under a long-term ground lease.

[36 FR 24653, Dec. 22, 1971]

§ 240.16 Mortgage provisions.

(a) *Mortgage form.* (1) The term "mortgage" as used in this part means a lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed" or other term common in a jurisdiction, as well as the credit instrument, or note, secured thereby.

(2) The mortgage shall be in a form meeting the requirements of the Commissioner. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may

also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

(b) The mortgage shall:

(1) Come due on the first of the month.

(2) Involve a principal obligation in multiples of $50.

(3) Have an amortization of either 5, 7, 10, 12, 15, 17, or 20 years by providing for either 60, 84, 120, 144, 180, 204 or 240 monthly amortization payments.

(4) Provide for payments to interest and principal to begin not later than the first day of the month following 60 days from the date the lender's certificate on the commitment was executed.

(c) *Maturity of mortgage.* The mortgage shall have a maturity satisfactory to the Commissioner but not less than five nor more than 20 years from the date of the beginning of amortization.

(d) *Lien status.* The mortgage shall be a first lien upon the fee simple title and a first or second lien upon the leasehold.

(e) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

[45 FR 33969, May 21, 1980, as amended at 49 FR 21320, May 21, 1984; 53 FR 34284, Sept. 6, 1988]

§ 240.19 Maximum charges, fees or discounts.

In addition to the provisions of § 203.27 relating to charges, fees or discounts which a mortgagee may collect from the mortgagor, which is incorporated by reference, the mortgagee may collect from the mortgagor a reasonable and customary charge in the nature of a discount.

[44 FR 55602, Sept. 24, 1979]

Waivers

§ 240.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

[47 FR 35960, Aug. 18, 1982]

Subpart B—Contract Rights and Obligations

§ 240.251 Incorporation by reference.

(a) All of the provisions of §§ 203.440 et seq. of this chapter covering rehabilitation loans under section 203(k) of the National Housing Act shall apply to mortgages for the purchase of the fee simple title to property which are insured under section 240 of the Act.

(b) In addition to the provisions of paragraph (a) of this section, the definitions contained in § 203.50 of this chapter shall apply to this subpart.

[36 FR 24653, Dec. 22, 1971, as amended at 45 FR 33969, May 21, 1980]

Subpart C—Servicing Responsibilities

§ 240.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to loans for the purchase of the fee simple title of property which are insured under section 240 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48205, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

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241.115 Zoning, deed or building restrictions.
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241.1070 Agreed interest rate.
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241.1245 Insurance endorsement.
241.1250 Effect of endorsement.

AUTHORITY: Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z–6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

SOURCE: 36 FR 24653, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 241.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Insured loan" means a loan which has been insured by the FHA, as evidenced by the endorsement of the credit instrument for insurance by the Commissioner.

(e) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(f) "Loan" means an advance of funds or credit evidenced by a note, which is secured by a security instrument.

(g) "Outstanding indebtedness relating to the property" means the total outstanding amount of unsecured obligations of the borrower incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

(h) "Lender" means an approved financial institution eligible for insur-

ance under section 241 of the Act that is the holder of an insured loan or the holder of a loan presented for insurance.

(i) "Borrower" means the owner of a project covered by an insured mortgage or a mortgage held by the Secretary, which owner receives and becomes primarily obligated for the payment of a supplementary loan.

(j) "Secretary" means the Secretary of Housing and Urban Development or his authorized representatives.

(k) "Energy conserving improvements" means the purchase and installation of weatherization materials as defined in section 6862(9) of Title 42. Specifically, the term "weatherization materials" means:

(1) Caulking and weatherstripping of doors and windows;

(2) Furnace efficiency modifications limited to:

(i) Replacement burners designed to substantially increase the energy efficiency of the heating system,

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(3) Clock thermostats;

(4) Ceiling, attic, wall, floor, and duct insulation;

(5) Water heater insulation;

(6) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective windows;

(7) Such other insulating or energy conserving devices or technologies as the Secretary of Energy may determine, by rule, after consulting with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director of the Community Services Administration.

For the purposes of this subpart, "energy conserving improvements" shall also include the purchase and installation of solar energy systems and/or individual utility meters if such meters are purchased or installed in connection with other energy conserving improvements or with a solar energy system or the project meets minimum standards of energy conservation established by the Secretary.

(l) "Solar energy system" means any addition, alteration, or improvement to an existing or new multifamily structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or the passive type based on the convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.

[36 FR 24653, Dec. 22, 1971, as amended at 45 FR 57982, Aug. 29, 1980]

§ 241.10 Application and commitment fees.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of an improvement loan on a project shall be submitted by an approved lender and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless the exhibits called for by such form are furnished.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the loan applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the loan applied for, shall also be submitted with the application for a firm commitment.

§ 241.11 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must

meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39696, Sept. 27, 1989]

§ 241.15 Commitments.

(a) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the project and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(b) *Firm commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the loan will be insured.

(c) *Types of firm commitment.* The firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(d) *Term of commitment.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(2) A firm commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(3) A firm commitment to insure upon completion shall be effective for a designated term within which the borrower is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(4) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(e) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 241.20 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(a) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(b) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

§ 241.25 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in loan between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the

amount of the loan, either by amendment or by substitution of a new loan, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

§ 241.30 Refund of fees.

If the amount of the commitment issued or increase in loan granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection, and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction of financing of the project has been prevented because of condemnation proceedings or other legal action taken by governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

§ 241.35 Charges by lender.

(a) The lender may collect from the borrower the amount of the fees provided for by this subpart.

(b) The lender may also collect from the borrower an initial service charge, as reimbursement for the cost of closing the transaction, in an amount not to exceed the following:

(1) Two percent of the original principal amount of the loan in all cases except where the loan proceeds are to be used only for the purchase of equipment for a nursing home or group practice facility.

(2) One-half of 1 percent of the original principal amount of the loan where the loan proceeds are to be used only for the purchase of equipment for a nursing home or group practice facility.

(c) Any charges to be collected by the lender in addition to those prescribed in paragraphs (a) and (b) of this section, shall be subject to the prior approval of the Commissioner.

§ 241.40 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1 through 203.4 or § 203.6 of this chapter shall be eligible for insurance of project improvement loans under this subpart.

§ 241.41 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that: (1) Storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

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(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the insured mortgaged property shall have the responsibility for: (1) Insuring the components in the name of the mortgagor while in transit and storage; and (2) delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

[44 FR 8197, Feb. 8, 1979, as amended at 48 FR 15898, Apr. 13, 1983]

§ 241.45 Note and security form.

The lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property to be improved is located.

§ 241.55 Method of loan payment.

The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender, and the Commissioner.

§ 241.60 Date of first payment to principal.

The Commissioner shall estimate the time necessary to complete the improvements to the project and shall establish the date of the first payment to principal.

§ 241.65 Maturity.

The loan shall have a maturity satisfactory to the Commissioner.

[46 FR 51383, Oct. 20, 1981]

§ 241.70 Maximum loan amount.

(a) Where the project is covered by an insured mortgage, the principal amount of the loan shall not exceed the lesser of the following:

(1) Ninety percent of the Commissioner's estimate of the value of the improvements, additions, or equipment.

(2) An amount which, when added to any outstanding indebtedness relating to the property, does not exceed the

maximum mortgage amount insurable under the section or title pursuant to which the mortgage covering such project or facility is insured.

(b) Where the project is covered by a mortgage held by the Secretary, the principal amount of the loan shall be in an amount acceptable to the Secretary.

§ 241.75 Agreed interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[49 FR 19459, May 8, 1984]

§ 241.80 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.85 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a survey, satisfactory to the Commissioner, and a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (a)(2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L.I.C. Standard Mortgage Form", or the "ATA Standard Mortgage Form", or such other form as may be approved by the Commissioner; shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured; and shall become an owner's policy, running to the lender as owner upon its acquisition of the property in extinguishment of the debt, and to the Secretary as owner upon his acquisition of the property pursuant to the loan insurance contract.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project involving rehabilitation where the loan does not exceed $200,000.

§ 241.90 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. Such payments shall continue only as long as the contract of insurance remains in effect.

§ 241.95 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and the aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment in the following order:

(1) Premium charges under the contract of insurance.

(2) Interest on the loan.

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under

paragraph (a) of this section shall constitute a default. The security instrument shall provide for a grace period of 30 days within which time the default must be cured.

§ 241.100 Prepayment privilege and charge.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (c) of this section, the security instrument shall contain the following provisions:

(i) A provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days advance written notice.

(ii) A provision requiring full prepayment of the loan in the event the insured mortgage or the mortgage held by the Secretary is paid in full prior to maturity, unless the borrower submits to such regulation or restriction as the Commissioner may require.

(2) If the loan exceeds $200,000, it may contain a provision for such charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge. A provision for a charge in the event of prepayment may not be included in a loan of $200,000 or less.

(b) *Prepayment under cost certification.* Any reduction in the original principal amount of the loan resulting from the cost certification requirements of § 241.155 or § 241.160 shall not be construed as a prepayment of the mortgage permitting the imposition of any penalty or charge.

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24653, Dec. 22, 1971, as amended at 51 FR 2360, Jan. 16, 1986]

§ 241.105 Late charge.

The note and security instrument may provide for the lender's collection of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 241.110 Certificate of use for transient or hotel purposes.

(a) The borrower shall certify under oath, that so long as the loan is insured or held by the Commissioner, the borrower will not rent, permit the rental, or permit the offering for rental of the housing, or any part thereof, covered by such loan for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean:

(1) Rental for any period less than 30 days; or

(2) Any rental which includes the provision of customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens and bellboy service.

(b) The provisions of paragraph (a) of this section shall not apply in the following instances:

(1) In connection with a housing for the elderly project covered by a mortgage insured under the provisions of §§ 231.1 et seq. of this chapter or by a mortgage held by the Secretary.

(2) In connection with a nursing home covered by a mortgage insured under the provisions of §§ 232.1 et seq. of this chapter or by a mortgage held by the Secretary.

(3) In connection with a group practice facility covered by a mortgage insured under the provisions of §§ 1100.1 et seq. of this chapter or by a mortgage held by the Secretary.

(4) In connection with a hospital covered by a mortgage insured under the provisions of § 242.1 et seq. of this chapter or by a mortgage held by the Secretary.

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[36 FR 24653, Dec. 22, 1971, as amended at 42 FR 3162, Jan. 17, 1977]

§ 241.115 Zoning, deed or building restrictions.

The project when improved shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations.

§ 241.120 Certificate of nondiscrimination by borrower.

The borrower shall certify to the Commissioner as to each of the following points:

(a) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of , or otherwise make unavailable or deny the property covered by the security instrument to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 241.125 Use of loan proceeds.

The proceeds of the loan shall be used only to finance improvements or additions including energy conserving improvements, solar energy systems and individual utility meters that are in conformity with standards prescribed by the Secretary, for a multifamily project, nursing home, intermediate care facility, group practice facility or hospital which is subject to a mortgage insured under any section or title of the Act or covered by a mortgage held by the Secretary. Use of loan proceeds for purchase and installation of individual utility meters is subject to the purchase and installation of energy conserving improvements as defined in § 241.1(k). The proceeds of a loan involving a nursing home, intermediate care facility, group practice facility or hospital may also be used to purchase equipment to be used in the operation of such nursing home, intermediate care facility, group practice facility or hospital.

[45 FR 57983, Aug. 29, 1980]

§ 241.130 Supervision by Commissioner.

The Commissioner may regulate and restrict the borrower as long as the Commissioner is the insurer, holder or reinsurer of the loan. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 241.135 Building loan agreement.

When advances of loan proceeds during the construction of the improvements are to be insured, the borrower and lender shall, prior to the initial endorsement of the note for insurance, execute a building loan agreement approved by the Commissioner and setting forth the terms and conditions on which progress payments may be advanced during construction.

§ 241.140 Assurance of completion.

(a) The borrower shall furnish assurance of completion of the project in the following minimum forms and amounts:

(1) Where the estimated cost of construction of the improvements is $500,000 or less, the borrower shall furnish assurance of completion of the project in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as the general contractor, or by the individuals operating as the general contractor.

(2) Where the estimated cost of construction of the improvements is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the minimum amount of 100 percent of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the minimum amount of 15

percent of the amount of the HUD estimate of construction or rehabilitation cost.

(3) All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies executing a bond and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(b) The lender may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. In the event a demand under the letter of credit is not immediately met, the lender shall forthwith provide cash equivalent to the undrawn balance thereunder.

(c) Supplemental loans, incurred solely for the purpose of purchasing equipment in a nursing home, group practice facility or hospital, are exempt from the above assurance of completion requirements.

[36 FR 24653, Dec. 22, 1971, as amended at 41 FR 41517, Sept. 22, 1976; 42 FR 3162, Jan. 17, 1977; 48 FR 44071, Sept. 27, 1983]

§ 241.145 Labor requirements.

All of the labor standards and prevailing wage requirements which were applicable to the insurance of the existing project mortgage, or pursuant to which the original project mortgage was insured, shall also be complied with in connection with the loan insured under this section.

§ 241.150 Discrimination prohibited.

Any contract or subcontract for the construction of improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, creed or national origin.

§ 241.155 Cost certification requirements; loans $200,000 or less.

When the principal amount of the loan is $200,000 or less, the following provisions shall apply:

(a) *Certification agreement.* The lender shall submit with the application an agreement on a form prescribed by the Commissioner and executed by the borrower and the lender, in which:

(1) The borrower agrees to execute, upon completion of the improvements, a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the commitment, the amount of the loan shall not exceed the applicable percentage of the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $10,000, or adjusted to the lowest $100 multiple where the amount exceeds $10,000.

(b) *Certificate and adjustment.* No loan shall be insured unless:

(1) The required certification of actual cost is made by the borrower; and

(2) The amount of the loan is adjusted to reflect the actual cost of the improvements.

(c) *Cost computation.* The term "actual cost of the improvements" shall mean the borrower's cost of the improvements, after deducting the amount of any kickbacks, rebates, or trade discounts received in connection with the improvements, and including:

(1) The amounts paid under any contract for the improvements, labor and materials, and for any other items of expense approved by the Commissioner; and

(2) A reasonable allowance for contractor's profit, in an amount approved by the Commissioner, where the Commissioner determines that there is an identity of interest between the borrower and the contractor.

§ 241.160 Cost certification requirements; loans over $200,000.

When the principal amount of the loan is over $200,000, the following provisions shall apply:

(a) *Certification of cost requirements.* Prior to initial endorsement of the loan for insurance, the borrower,

the lender and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of loan proceeds over the actual cost of the improvements to the project. Under this agreement, the borrower shall agree to:

(1) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors, material suppliers, and equipment lessors;

(2) Enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the borrower and the builder;

(3) Execute a certificate of actual costs upon completion of the improvements; and

(4) Apply any excess of loan proceeds over the borrower's actual cost of the improvements in reduction of the outstanding balance of the principal of the loan.

(b) *Form of contract.* The form of contract between the borrower and the builder shall be in accordance with the following:

(1) *Lump sum contract.* If the Commissioner determines that there is no identity of interest between the borrower or any of the officers, directors or stockholders of the borrower and the builder or contractor, there may be used a lump sum contract providing for payment of a specified amount.

(2) *Cost plus fixed fee contract.* (i) If the Commissioner determines that there is any identity of interest (financial or otherwise) between the borrower, its officers, directors or stockholders and the builder or contractor, the form of contract shall provide for payment of the actual cost of construction not to exceed an upset price and may provide for payment of a builder's fixed fee not exceeding a reasonable allowance as established by the Commissioner in accordance with customary practices in the area.

(ii) In any case where the borrower is a nonprofit entity, a cost plus fixed fee contract shall be used unless it is established to the Commissioner's satisfaction that such form of contract is not required to protect his interests and the interests of the borrower, in which case, a lump sum form of contract may be used.

(c) *Certificates as to subcontracts.* If the Commissioner determines that there is any identity of interest (financial or otherwise) between the borrower, its officers, directors or stockholders and any subcontractor, material supplier, or equipment lessor, the borrower shall certify in form prescribed by the Commissioner, prior to final endorsement of the loan for insurance, that the amounts paid to such subcontractor, material supplier, or equipment lessor, were not more than the rate prevailing in the locality for similar work, materials, and equipment.

(d) *Certificate of actual cost.* The borrower's certificate of actual cost, in form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement and shall show the actual cost to the borrower of:

(1) The construction contract, including all costs of construction under a lump sum contract, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the borrower corporation, or to any of its officers, directors or stockholders.

(2) Architect's fees;

(3) Off-site public utilities and streets not included in the general contract;

(4) Organizational and legal work; and

(5) Other items of expense approved by the Commissioner.

(e) *Cost plus fixed fee contract—additional certification.* When the work has been completed under a cost plus fixed fee contract, the borrower's certification shall also show:

(1) Allocations of general overhead items as are acceptable to the Commissioner; and

(2) A reasonable allowance for the builder's profit as established by the Commissioner.

(f) *Contractor's certification—cost plus fixed fee contract.* A contractor receiving a cost plus fixed fee contract shall certify in form prescribed by the Commissioner as to all actual costs paid for labor, materials, and subcontract work under the general contract. Such certification shall take into consideration any kickbacks, rebates,

trade discounts, or other similar payments to the builder or borrower corporation or any of its officers, directors or stockholders.

(g) *Adjustment resulting from cost certification.* If the principal obligation of the loan exceeds the applicable percentage of the borrower's actual cost of the improvement, the loan shall be reduced by the amount of such excess prior to the final endorsement for insurance.

(h) *Certificate of public accountant.* Each certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 241.165 Eligibility of refinancing transactions.

A loan given to refinance an existing loan that is insured under this subpart may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act. Insurance of the refinancing loan is subject to the following limitations:

(a) *Principal amount.* The principal amount of the refinancing loan may not exceed the lesser of the original principal amount of the existing insured loan, or the unpaid principal amount of the existing insured loan, to which may be added loan closing charges associated with the refinancing loan and costs, as determined by the Commissioner, of improvements required to be made to property.

(b) *Debt service payment on a refinancing loan for a hospital.* The monthly debt service payment for the refinancing loan on a hospital may not exceed the debt service payment charged for the existing loan.

(c) *Loan term.* The term of the new loan shall not exceed the unexpired term of the existing loan, except that the new loan may have a term of not more than 12 years in excess of the unexpired term of the existing loan in any case in which the Commissioner determines that the insurance of the loan for an additional term will inure to the benefit of the insurance fund under which the loan is insured, taking into consideration the outstanding insurance liability under the existing insured loan and the remaining economic life of the property.

[53 FR 16074, May 5, 1988]

§ 241.170 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988. Redesignated at 53 FR 16074, May 5, 1988]

§ 241.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations

§ 241.251 Cross-reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project and group practice facility mortgages insured under section 241 of the National Housing Act, except the following provisions:

Sec.
207.251 Definitions.
207.253a Termination of insurance contract.
207.259 Insurance benefits.
207.260 Protection of mortgage security.
207.262 No vested right in fund.

(b) For the purposes of this subpart, the terms "mortgagor," "mortgagee"

and "mortgage," as used in Subpart B, Part 207 of this chapter shall be construed to mean "borrower," "lender" and "supplementary loan (including the security instrument)," respectively.

[36 FR 24653, Dec. 22, 1971, as amended at 37 FR 8664, Apr. 29, 1972; 48 FR 57129, Dec. 28, 1983]

§ 241.260 Definitions.

All of the definitions contained in § 241.1 shall apply to this subpart. In addition, the term "contract of insurance", as used in this subpart, means the agreement evidenced by endorsement of the credit instrument by the Commissioner or his duly authorized representative, and includes the provisions of this subpart and of the National Housing Act.

§ 241.261 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to multifamily loans insured under this subpart, except that, with respect to loans initially or initially and finally endorsed for insurance on or after July 15, 1978, insurance benefits shall be paid in cash if insurance benefits under the insured project mortgage are payable in cash, unless the mortgagee files a written request for payment in debentures. If such a request is made, payment will be made in debentures with a cash payment to adjust for any difference between the total amount of the insurance payment and the amount of the debentures issued.

[48 FR 57129, Dec. 28, 1983]

§ 241.265 Insurance of property against flood.

The mortgaged property shall be insured against flood as stipulated by the Federal Housing Commissioner. The mortgagee shall obtain such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of mortgage insurance may be terminated at the election of the Commissioner.

[39 FR 26023, July 16, 1974]

§ 241.270 Refund upon termination of insurance.

Upon termination of the insurance contract by payment in full or by voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid, which is applicable to the portion of the year subsequent to (a) the date of the prepayment or (b) the effective date of the voluntary termination of the contract of insurance.

§ 241.275 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

Subpart C—Eligibility Requirements—Supplemental Loans to Finance Purchase and Installation of Energy Conserving Improvements, Solar Energy Systems, and Individual Utility Meters in Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage

SOURCE: 45 FR 57983, Aug. 29, 1980, unless otherwise noted.

§ 241.500 Definitions.

In addition to the definitions contained in Subpart A of this part, incorporated herein by reference, except § 241.1(f), (h) and (i), the following terms, as used in § 241.500 et. seq., shall have the meaning indicated:

(a) "Approved lender" means a financial institution or other mortgagee approved by the Commissioner as eligible for insurance under section 2 of the National Housing Act, or a mortgagee approved under section 203(b)(1) of the National Housing Act, or a state housing agency approved pursuant to 24 CFR 883.102.

(b) "Borrower" means the owner of a project held in fee simple or of a leasehold interest which is not now covered by a mortgage insured or held by the Secretary.

(c) "Energy saving loan" means any form of secured obligation used in connection with the purchase and installation of energy conserving improvements.

(d) "Multifamily project" means a project which consists of not less than five dwelling units on one site, each such unit providing complete living facilities including provisions for cooking, eating, and sanitation within the unit and which is not now covered by a mortgage insured or held by the Secretary.

Fees and Charges

§ 241.505 Application and commitment fees.

(a) *Application.* An application for the insurance of either a conditional or firm commitment for insurance of an energy saving loan on a project shall be submitted by an approved lender and by the sponsors of such project through the local HUD office on an approved FHA form.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the loan applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the loan applied for, shall also be submitted with the application for a firm commitment.

§ 241.510 Commitments.

(a) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the proposed energy conserving improvements and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(b) *Firm commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the loan will be insured.

(c) *Types of firm commitment.* (1) Where the amount of the loan is $250,000 or more, the firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(2) Where the amount of the loan is less than $250,000, the firm commitment shall provide for insurance of the loan after completion of the improvements.

(d) *Term of commitment.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment, normally 60 days.

(2) A firm commitment to insure advances shall be effective for a period of not more than 90 days from the day of issuance.

(3) A firm commitment to insure upon completion shall be effective for a designated term within which the borrower is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(4) The term of either a conditional or firm commitment may be extended in such a manner as the Commissioner may prescribe.

(e) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90 day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 241.515 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(a) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(b) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

§ 241.520 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. if an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the ispection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in loan between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the loan, either by amendment or by substitution of a new loan, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

§ 241.525 Refund of fees.

If the amount of the commitment issued or an increase in loan prior to endorsement is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection, and reopening fees may be refunded, in whole or in part if it is determined by the Commissioner that the installation of energy conserving improvements for the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine.

§ 241.530 Maximum fees and charges by lender.

The lender may collect from the borrower the amount of the fees provided for in this subpart. The lender may also collect from the borrower an initial service charge in an amount not to exceed 2 percent of the original principal amount of the loan to reimburse the lender for the cost of originating and closing the transaction. Any additional charges shall be subject to the prior approval of the Commissioner.

ELIGIBLE SECURITY INSTRUMENTS

§ 241.530a Note and security form.

The lender shall present for insurance a note and security instrument, on forms approved by the Commissioner for use in the jurisdiction in which the property to be improved is located.

[45 FR 57983, Aug. 29, 1980. Correctly designated at 45 FR 80276, Dec. 4, 1980]

§ 241.535 Loan multiples—minimum principal.

The loan shall involve a principal obligation in multiples of $100, and the minimum principal obligation shall be $10,000.

§ 241.540 Method of loan payment and amortization period.

(a) *Monthly payments.* The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payment in accordance with the amortization plan as agreed upon by the borrower, the lender and the Commissioner.

(b) *Amortization period.* (1) The loan shall have an amortization of either 5, 10, or 15 years by providing for either 60, 120, or 180 monthly amortization payments. No energy saving loan shall have an amortization period in excess of 15 years unless the amount of the loan exceeds $50,000.00, in which event the amortization period may be increased to 20 years, with a provision for 240 monthly amortization payments.

(2) In any event, the loan shall have a maturity satisfactory to the Commissioner of not less than 2 or more than 20 years from the date of the beginning of amortization, or the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

(3) The Commissioner shall establish the date of the first payment to principal, which shall be no later than the first day of the second month following the date of final endorsement (for projects involving insurance of advances) or endorsement (for projects involving insurance upon completion) of the loan for insurance.

§ 241.545 Covenant against liens.

The security instrument shall contain a covenant against the creation by the borrower of additional liens against the property superior or inferior to the lien of such instrument, except with the prior approval of the Commissioner.

§ 241.550 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date, the next annual insurance premium payable by the lender to the Commissioner.

§ 241.555 Security instrument and lien.

(a) The security instrument shall cover the entire property included in the project, shall be a lien on the real property of the project under the laws of the jurisdiction in which the project is located, and may be junior to such prior liens or mortgage indebtedness as the Commissioner may approve. The security instrument shall contain a provision that a default under the first mortgage is a default under the supplementary loan security instrument.

(b) For bond-financed projects where the bond resolution contains a provision prohibiting the creation of additional liens, the Commissioner may accept at his/her option:

(1) A first lien on another property whose fair market value as determined by the Commissioner equals or exceeds the amount of the loan insured under this part;

(2) A Collateral Account in an amount not less than the amount of the loan insured under this part funded with cash or negotiable bonds or securities backed by the full faith and credit of the United States Government; or

(3) Other security acceptable to the Commissioner.

§ 241.560 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the lender and the borrower.

(b) Interest shall be payable in monthly installments on the principal amount of the loan outstanding on the due date of each installment.

[45 FR 57983, Aug. 29, 1980, as amended at 49 FR 19459, May 8, 1984]

§ 241.565 Maximum loan amount.

The principal amount of the loan shall in no event exceed the cost of the energy conserving improvements including the purchase thereof, cost of

installation, architect's fees, interest during construction and such other miscellaneous fees and charges incident to construction as determined by the Commissioner. Nor shall the principal amount of the loan exceed the lesser of the following:

(a) An amount which can be supported by residual income, which is the amount of net income remaining after payment of all existing debt service requirements and deduction of proprietary earnings, as determined by the Commissioner. The computation of net income shall take into account the amount which will be saved in operating costs over the period of repayment of the loan as a result of the installation of the energy conserving improvements.

(b) An amount which, when added to the existing outstanding indebtedness, does not exceed the Commissioner's estimate of the value of the project after the energy conserving improvements are installed.

§ 241.570 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his/her insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he/she shall indicate on the original credit instrument the total approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the mortgagee or lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

(d) *Insurance upon completion.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he/she shall indicate the total approved for insurance and endorse the credit instrument, identifying the date of insurance.

§ 241.580 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and this aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan;

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute an event of default and the loan shall further provide for a grace period of 30 days within which time the default must be cured.

§ 241.585 Prepayment privileges and prepayment charge.

The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days advance written notice and it may contain a provision, with the approval of the Commissioner, for a reasonable charge in the event of prepayment. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without an additional charge. A provision for a charge in the event of prepayment may not be included in a loan of $200,000 or less.

§ 241.586 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988]

PROPERTY REQUIREMENTS

§ 241.590 Eligibility of property.

(a) A loan to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than seventy-five years which is renewable; or

(3) Under a lease having a period of not less than twenty-five years to run from the date the loan is executed.

(b) The property constituting security for the loan transaction must be held by an eligible borrower as herein defined and must at the time the loan is insured be free and clear of all liens other than those specifically approved by the Commissioner.

TITLE

§ 241.595 Eligibility of title.

In order for the property which is to be the security for a loan to be insured under this subpart to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.600 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a survey, satisfactory to the Commissioner, and a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (a)(2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. Such policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured; and shall become an owner's policy running to the lender as owner upon its acquisition of the property in extinguishment of the debt, and to the Secretary as owner upon his/her acquisition of the property pursuant to the loan insurance contract.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project where the loan does not exceed $200,000.

FORM OF CONTRACT

§ 241.605 Contract requirements.

(a) When the principal amount of the loan is $100,000 or less, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) The contract between the borrower and the general contractor may be in the form of either a lump sum contract or a cost plus contract. Either form of contract shall include the cost of the energy conserving improvements, their installation, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary. A lump sum contract shall provide for the payment of a specified amount. A cost plus contract shall provide for the payment of the contractor's actual cost of compliance with the requirements of the contract, plus such allowances for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed the

upset price as approved by the Commissioner.

(2) If agreed to by the general contractor and borrower, a lump sum form of contract between the borrower and the general contractor may be used unless the Commissioner determines that a cost plus contract with a maximum upset price is necessary to protect the interest of the borrower or the Commissioner.

(b) When the principal amount of the loan is over $100,000, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) *Lump sum contract.* If the Commissioner determines that there is no identity of interest between the borrower or any of the officers, directors or stockholders of the borrower and the contractor, there may be used a lump sum contract providing for payment of the specified amount.

(2) *Cost plus fixed fee contract.* (i) If the Commissioner determines that there is any identity of interest (financial or otherwise) between the borrower, its officers, directors or stockholders and the contractor, the form of contract shall provide for payment of the actual cost of construction not to exceed an upset price and may provide for payment of a fixed fee not exceeding a reasonable allowance as established by the Commissioner in accordance with customary practices in the area.

(ii) In any case where the borrower is a nonprofit entity, a cost plus fixed fee contract shall be used unless it is established to the Commissioner's satisfaction that such form of contract is not required to protect his/her interests and the interests of the borrower, in which case, a lump sum form of contract may be used.

§ 241.610 Assurance of completion.

(a) The borrower shall furnish assurance of completion of the project in the following minimum forms and amounts:

(1) Where the estimated cost of construction of the improvements is $500,000 or less, the borrower shall furnish assurance of completion of the project in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as general contractor.

(2) Where the estimated cost of construction of the improvements is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the minimum amount of 25 percent of the construction contract, or a completion assurance agreement secured by a cash deposit in the minimum amount of 15 percent of the amount of the construction contract.

(3) All types of assurance of completion shall be on forms approved by the Commissioner. Any surety company executing a bond and any party executing a personal indemnity agreement must be satisfactory to the Commissioner.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(b) The lender may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. In the event a demand under the letter of credit is not immediately met, the lender shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 241.615 Certification of cost requirements.

(a) *Certification agreement.* The lender shall submit with the application an agreement on a form prescribed by the Commissioner and executed by the borrower and the lender.

(b) *Certificate and adjustment.* No loan shall be insured unless:

(1) A certification of actual cost is made by the contractor in cases in which a cost plus form of contract is used; and

(2) The amount of the loan is adjusted to reflect the actual cost to the borrower of the improvements when either a cost plus or lump sum form or contract is used.

(c) *Cost computation.* The term "actual cost of the improvements" shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates or trade discount received in connection with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expenses approved by the Commissioner.

(d) *Statement of facts.* Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(e) *Incontestability.* Upon the Commissioner's approval of the cost certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(f) *Records.* The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the contractor to keep similar records and, upon request by the Commissioner, both shall make available for examination such records, including any collateral agreements.

(g) *Certificate of public accountant.* Where required by the Commissioner, each certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or prior to December 31, 1970, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

Eligible Borrowers

§ 241.625 Eligible borrowers.

In order to be eligible as a borrower under this subpart, the applicant shall be a profit, limited distribution, nonprofit, or cooperative owner of a multifamily housing project which is not covered by a mortgage insured or held by the Secretary and which the Commissioner has determined to be an acceptable risk in that energy conservation or solar energy benefits to be derived outweigh the risks of possible loss of the Federal Government.

§ 241.626 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39696, Sept. 27, 1989]

Special Requirements

§ 241.630 Maximum insurance against loss.

A loan insured under this subpart shall be insured for 90 percent of any loss incurred by the person holding the note for the loan.

§ 241.635 Regulatory agreement.

Any borrower obligated on the note for any loan insured under this subpart shall be regulated or restricted in a manner and on a form prescribed by the Secretary as to rents or sales, charges, capital structure, rate of return and methods of operation of the multifamily project to such an extent and in such manner as to provide reasonable rental to tenants and a reasonable return on the investment until the termination of all obligations of the Secretary under the contract of insurance.

§ 241.640 Discrimination prohibited.

Any contract or subcontract executed for the installation of equipment, or construction of improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of sex, religion, race, color, creed or national origin.

§ 241.645 Labor standards and prevailing wage requirements.

(a) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor set forth in §§ 5.1 through 5.12 of Title 29.

(b) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6(b) of Title 29.

(c) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest, was on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to the provision of the Secretary of Labor set forth in §§ 5.1 through 5.12 of Title 29.

(d) No advance under any mortgage shall be eligible for insurance unless there is filed with the application of such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved, have been paid not less than the wage prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to beginning of construction and after the date of filing of the application for insurance.

(e) Compliance with the provisions of this subsection shall be evidenced at such time and in such manner as the Commissioner may prescribe.

Subpart D—Contract Rights and Obligations—Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage

SOURCE: 45 FR 57987, Aug. 29, 1980, unless otherwise noted.

§ 241.800 Definitions.

All of the definitions contained in § 241.500 shall apply to this subpart. In addition, as used in this subpart, the following terms shall have the meaning indicated:

(a) "Contract of insurance" means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan and includes the provisions of this subpart and the applicable provisions of the Act.

(b) "Maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan.

PREMIUMS

§ 241.805 Insurance premiums.

(a) *First premium.* The lender, upon the endorsement of the loan for insurance, shall pay to the Commissioner a first loan insurance premium equal to one percent of the original face amount of the note.

(b) *Second premium.* The lender, on the date of the first principal payment, shall pay a second premium equal to one percent of the average outstanding principal obligation of the loan for the year following such first principal payment date which shall be adjusted as of that date so that the aggregate of the first and second premiums shall equal the sum of one per-

cent per annum of the average outstanding principal obligation of the loan for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(c) *Annual insurance premium.* Until the note is paid in full, or until the loan is assigned to the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the first principal payment shall pay an annual loan insurance premium equal to one percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) *Method of premium payment.* Premiums shall be payable in cash or in debentures of the General Insurance Fund at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as provided in this part.

(e) *Calculation of premiums.* The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 241.805a Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

§ 241.815 Termination of insurance.

(a) *Prepayment in full.* The contract of insurance shall be terminated if the loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment, or 30 days prior to the Commissioner's receipt of the prepayment notice, whichever is later.

(b) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the borrower and the lender for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

§ 241.825 Pro rata refund of insurance premium.

Upon termination of a loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid which is applicable to the portion of the year subsequent to the effective date of the termination.

Rights and Duties of Lender Under the Contract of Insurance

§ 241.830 Definition of default.

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument, the note shall be considered in default for the purposes of this subpart.

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default: *Provided,* The lender, because of such default, has exercised its rights under the note or security instrument and accelerated the debt.

(c) The failure to make any payment or to perform any covenant under the first conventional note and mortgage by reason of which the holder thereof declares a default as evidenced by formal written declaration of said default to the Commissioner and the lender by the holder of the first note and mortgage, shall be considered a default under the insured loan.

(d) If such defaults as defined in paragraphs (a), (b), and (c) of this section continue for a period of 30 days, the lender shall be entitled to receive the benefits of insurance hereinafter provided.

§ 241.840 Date of default.

In computing loan insurance benefits, the date of default shall be considered as:

(a) The date of the lender's acceleration of the debt because of the borrower's uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they become due.

(c) The date of the lender's acceleration of the debt because of the borrower's default under the first conventional note and mortgage.

§ 241.850 Notice of default.

(a) If the default is not cured within the 30 day grace period, as defined in § 241.530(d), the lender shall, within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact that the lender may not have elected to accelerate the debt.

§ 241.860 Commissioner's right to require acceleration.

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or under the conventional note and mortgage, the Commissioner may require the lender to accelerate payment of the outstanding principal balance due.

§ 241.865 Election by the lender.

Where a real estate mortgage, or other security instrument has been used to secure the payment of a loan made under the provisions of this subpart and Subpart C of this part, the lender may either elect to assign the loan to the Commissioner in exchange for the payment of insurance benefits or may exercise its rights under the note and security instrument in lieu of making a claim for insurance benefits. If the lender elects the latter course, the Commissioner shall be so notified and the contract of insurance shall be deemed terminated upon the date of receipt of such notification.

§ 241.875 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 241.880 Items to be delivered on submitting claim.

Within 30 days after the filing of the notice of intention to assign the loan to the Commissioner, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall deliver to the Commissioner:

(a) The fiscal data pertaining to the loan transactions;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and

owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default and all claims of the lender against the borrower or others arising out of the loan transaction;

(e) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner;

(f) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(g) Any additional information or data which the Commissioner may require;

(h) The following cash items, held in connection with the loan insured under this subpart, shall either be retained by the lender or delivered to the Commissioner at the time the insurance claim is filed.

(1) Any cash held by the lender or its agents or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal the loan indebtedness.

(2) All funds held by the lender for the account of the borrower received pursuant to any other agreement.

(i) On the date the assignment of the note and security instrument or instruments are filed for record, the lender shall notify the Commissioner and the Office of Finance and Accounting by telegram of such recordation.

§ 241.885 Insurance benefits.

(a) *Method of payment.* Payment of claims shall be made in the following manner:

(1) *Payment in cash.* Unless a written request for payment in debentures is filed with the application, payment shall be made in cash.

(2) *Optional payment in debentures.* Payment shall be made in debentures upon the filing of a written request for same with the application.

(b) *Amount of payment.* Upon acceptable assignment of the note and security instrument to the Commissioner, the insurance benefits shall be paid in an amount equal to 90 percent of the amount determined as follows:

(1) By adding to the unpaid principal amount of the loan, computed as of the date of default, the following items:

(i) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(ii) Any advances approved by the Commissioner made previously by the lender under the provisions of the note or security instrument or instruments.

(iii) Reimbursements for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(iv) Any loan insurance premiums paid after default.

(v) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned thereon, as of the date such cash payment is made, except when the lender fails to meet any one of the applicable requirements of §§ 241.850, 241.875, and 241.880, within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section the following items:

(i) Any amount received by the lender on account of the loan after the date of default.

(ii) Any net income received by the lender from the property covered by the note or security instrument and not applied to prior debts held by the lender.

(iii) The sum of the cash items retained by the lender pursuant to § 241.880(h) (1) and (2).

§ 241.890 Characteristics of debentures.

Debentures issued in settlement of insurance claims under this subpart shall have the same characteristics and the same requirements for registration and redemption as those issued pursuant to Subpart B of this part except that debentures shall bear interest at the rate in effect as of the date the commitment was issued, or as of the date the loan was first endorsed for insurance, whichever rate is higher, and shall mature 10 years from the date of issue which date shall be the date of execution of the assignment of the loan to the Commissioner.

§ 241.893 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, shall be adjusted by the issuance of a check in payment thereof.

Assignments

§ 241.895 Assignment of insured loans.

(a) An insured loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan to other than an approved lender.

Extension of Time

§ 241.897 Actions to be taken by lender.

With respect to any action required of the lender within a period of time prescribed by this subpart, the Commissioner may extend such period.

Rights in Housing Fund

§ 241.900 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the General Insurance Fund.

§ 241.905 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time in whole or in part, but such amendment shall not adversely affect the interests of a lender under the contract of insurance on any loan already insured and shall not adversely affect the interests of a lender on any loan to be insured on which the Commissioner has made a commitment to insure.

Subpart E—Insurance for Equity Loans—Eligibility Requirements

Source: 53 FR 11234, Apr. 5, 1988 (interim), unless otherwise noted.

§ 241.1000 Purpose and scope.

Section 231 of the Housing and Community Development Act of 1987 amended the National Housing Act (the "Act") by adding a new subsection (f) to section 241. This section authorizes the Secretary to provide insurance for an equity loan as a vehicle for the owner of an eligible multifamily project to capture a portion of the project's equity. The insurance of the equity loan may only be provided as a specific element of a plan of action approved by the Commissioner under section 225 of the Housing and Community Development Act of 1987, where the Commissioner does not approve prepayment of the senior mortgage, and is not available under any other departmental program. The provisions of section 225 of the Housing and Community Development Act of 1987 terminate on February 5, 1990, and therefore, unless the aforesaid

section is extended an equity loan shall be insured only if the plan of action is approved by the Commissioner on or before February 5, 1990.

§ 241.1005 Definitions.

(a) All of the definitions of § 241.1 apply to equity loans insured under this Subpart E except the following definitions:

241.1 (i)—Borrower
241.1 (k)—Energy conserving improvements
241.1 (l)—Solar energy system

(b) As used in this subpart, the following terms have the meaning indicated:

"Borrower" means the owner of an eligible low income housing project, which owner receives and becomes primarily obligated for the repayment of an equity loan. This term includes a nonprofit organization or a limited equity tenant cooperative corporation, which is purchasing an eligible low income housing project by means of an equity loan and is obligated for the payment of the equity loan.

"Eligible low income housing" has the same meaning as provided at § 248.201 of this chapter.

"Equity" means, for purposes of subparts E and F of this part only, the difference between the fair market value of the project as determined by the Commissioner and the outstanding indebtedness relating to the property.

"Equity Loan" means a loan or advance of credit to the owner of an eligible low income housing project which is made for the purpose of implementing a plan of action approved in accordance with Part 248 of this chapter.

"Limited equity tenant cooperative corporation" means a tenant cooperative corporation which, in a manner acceptable to the Secretary, restricts the initial and resale price of the shares of stock in the cooperative corporation so that the shares remain affordable to lower income families and moderate income families.

"Lower income families" has the same meaning as provided at § 248.201 of this chapter.

"Moderate income families" has the same meaning as provided at § 248.201 of this chapter.

"Plan of section" has the same meaning as provided at § 240.201 of this chapter.

§ 241.1010 Feasibility letter.

(a) *Request for study.* The owner may request the Commissioner to undertake a feasibility analysis of an equity loan, and issue a feasibility letter. At the discretion of the Commissioner the feasibility analysis may be undertaken or denied.

(b) *Findings.* The issuance of a feasibility letter indicates completion of the Commissioner's preliminary analysis for the insurance of an equity loan. The feasibility letter shall contain the Commissioner's estimate of the supportable loan amount, but shall neither constitute a commitment to insure nor bind the Commissioner in any other manner.

(c) *Fee.* The Commissioner shall not charge a fee for undertaking a feasibility analysis or the issuance of a feasibility letter.

§ 241.1015 Application and commitment fees.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of an equity loan on a project shall be submitted by an approved lender and by the owner of the project to the Commissioner on a form prescribed by the Commissioner. No application shall be considered unless the exhibits called for by such forms are furnished.

(b) *Application and commitment fees.*—(1) *Application for conditional commitment.* An application-commitment fee of $2.00 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application-commitment fee in an amount which, when added to any prior fee received in connection with a conditional commitment application, will aggregate $3.00 per thousand dollars of the loan applied for.

§ 241.1020 Commitments.

(a) *Conditional commitment.* The issuance of a conditional commitment constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(b) *Firm commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the equity loan will be insured. The firm commitment may provide for the insurance of advances of equity loan proceeds as rent levels are achieved in accordance with a plan of action, or may provide for the insurance of the entire equity loan immediately upon endorsement of the note.

(c) *Term of commitment.* (1) A conditional commitment is effective for whatever term is specified in the text of the commitment.

(2) A firm commitment is effective for whatever term is specified in the text of the commitment.

(3) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 241.1025 Refund of fees.

If the amount of the commitment issued is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment and reopening fees may also be refunded to the applicant, in whole or in part, in such other instances as the Commissioner may determine.

§ 241.1030 Mortgage insurance premiums.

The lender, upon endorsement of the note, shall pay the Commissioner a first mortgage insurance premium equal to one percent of the original face amount of the equity loan.

(a) If the date of the first principal payment is more than one year following the date of endorsement, the lender upon each anniversary of such endorsement date, shall pay a premium equal to one percent of the original face amount of the loan. On the date of the first principal payment, the lender shall pay another premium equal to one percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said premiums shall equal the sum of:

(1) One percent of the average outstanding principal obligation of the loan for the year following the date of endorsement and (2) one percent per annum of the average outstanding principal obligation of the loan for the period from the first anniversary of the date of endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of endorsement, the lender, upon such first principal payment date, shall pay a second premium equal to one percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) One percent per annum of the average outstanding principal obligation of the loan for the period from the date of endorsement to the date of first principal payment and (2) one percent of the average outstanding principal obligation of the loan for the year following the date of the first principal payment.

(c) Until the equity loan is paid in full or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the first principal payment, shall pay an annual insurance premium equal to one percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) The premiums payable on or after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(e) Premiums shall be payable in cash or in debentures as par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart.

§ 241.1035 Charges by lender.

(a) The lender may collect from the borrower the amount of the fees provided for by this subpart.

(b) The lender may also collect from the borrower an initial service charge, as reimbursement for the cost of closing the transaction, in an amount not to exceed two percent of the original principal amount of the loan.

(c) Any charges to be collected by the lender in addition to those prescribed in paragraphs (a) and (b) of this section, shall be subject to the prior approval of the Commissioner.

§ 241.1040 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1 through 203.4 or § 203.6 of this chapter are eligible for insurance of equity loans under this subpart.

§ 241.1045 Note and security form.

Lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property is located, which shall not be changed without the prior approval of the Commissioner.

§ 245.1050 Method of loan payment.

The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender, and the Commissioner.

§ 241.1055 Date of first payment to principal.

The date for first payment to principal shall be established by the Commissioner.

§ 241.1060 Maturity.

The loan shall have a maturity satisfactory to the Commissioner.

§ 241.1065 Maximum loan amount.

The amount of the equity loan shall not exceed ninety percent of the owner's equity in the project, as determined by the Commissioner. Notwithstanding the above, the amount of the equity loan shall not exceed an amount which, when added to the existing indebtedness on the property, can be supported by ninety percent of the projected net income of the project, as determined by the Commissioner. The Secretary, in making a determination regarding the amount of an equity loan and sums available to service the said loan, shall take into account that the project's income may increase within the established limits of § 248.221(b) of this chapter.

§ 241.1070 Agreed interest rate.

The equity loan shall bear interest at the rate agreed upon by the borrower and the lender.

§ 241.180 Eligibility of title.

In order for the project to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.1085 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (a) (2), (3) or (4) of this section as the Commissioner may require. Any policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L.I.C. Standard Mortgage Form," or the "ALTA Standard Mortgage Form," or such other form as may be approved by the Commissioner; shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured; and shall become an owner's policy, running to the lender as owner upon its acquisition of the property in extinguishment of the debt, and to the Secretary as owner upon his acquisition of the property pursuant to the loan insurance contract.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

§ 241.1090 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. These payments shall continue only as long as the contract of insurance remains in effect.

§ 241.1095 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and the aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment in the following order:

(1) Premium charges under the contract of insurance.

(2) Interest on the loan.

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute a default. The security instrument shall provide for a grace period of 30 days within which time the default must be cured.

§ 241.1100 Prepayment privilege and charge.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (b) of this section, the security instrument shall contain a provision permitting the borrower to prepay the loan, in whole or in part, upon any interest payment date after giving to the lender 30 days advance notice of its intention to prepay.

(2) If the loan exceeds $200,000, the security instrument may contain a provision for an additional charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge. A provision for an additional charge in the event of prepayment may not be included in a loan of $200,000 or less.

(b) *Prepayment of bond-financed loans.* Where the lender has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation

notes, or both, the loan may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

§ 241.1105 Late charge.

The note and security instrument may provide for the lender's collection of a late charge, not to exceed 2 cents for each dollar of each payment to interst or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 241.1120 Mortgagee's consent.

The holder of an insured mortgage which is recorded prior to the equity loan shall not withhold its consent to the equity loan or the security instrument executed in connection with the equity loan transaction which subjects the project to the lien thereof.

Subpart F—Insurance for Equity Loans—Contract Rights and Obligations

SOURCE: 53 FR 11237, Apr. 5, 1988, unless otherwise noted.

§ 241.1200 Cross-references.

For the purposes of this subpart all the provisions of Part 207, Subpart B of this chapter, covering mortgages insured under Section 207 of the Act, apply to equity loans on a project insured under section 241(f) of the Act, except the following provisions:

Sec.
207.251—Definitions.
207.252—First, second and third premium.
207.252a—Premiums—operating loss loans.
207.252b—Premiums—mortgages insured pursuant to section 223(f) of the Act.
207.252c—Premiums—mortgages insured pursuant to section 238(c) of the Act.
207.254—Insurance endorsement.

(a) For the purposes of this subpart, all references in Part 207 of this chapter to Section 207 of the Act and to the term "mortgage" shall be construed to refer to Section 241(f) of the Act and "equity loan," respectively.

(b) All of the definitions in § 241.1005 apply to this subpart. In addition, as used in this subpart, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

§ 241.1205 Payment of insurance benefits.

All the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to an equity loan insured under this subpart, except that, insurance benefits shall be payable in cash, if the insurance benefits under the senior insured mortgage are payable in cash, unless the lender files a written request for payment in debentures. If such a request is made, payment shall be made in debentures with a cash payment to adjust for any difference between the total amount of the insurance payment and the amount of the debentures issued.

§ 241.1210 Condition for payment of insurance benefits.

(a) All of the provisions of § 207.258 of this chapter apply to this subpart, except that, if the holder of the senior insured mortgage institutes a foreclosure action, the lender shall notify the Commissioner in a timely manner of such action. The Commissioner, at his option, may then direct the lender to assign the equity loan to the Commissioner, or bid an amount necessary to acquire the project and convey the project to the Commissioner.

(b) If the equity loan is assigned in accordance with this section, the Commissioner at a foreclosure sale may bid, in addition to amounts otherwise authorized, any sum not in excess of the aggregate unpaid indebtedness secured by the senior insured mortgage and equity loan, plus taxes, insurance, foreclosure costs, fees and other expenses.

§ 241.1215 Calculation of insurance benefits.

All of the provisions of § 207.259 of this chapter apply to this subpart, except that if the lender, at the direction of the Commissioner, acquires title to the project at a foreclosure

sale instituted by the holder of the senior insured mortgage, the amount of the claim determined under § 207.259(c) of this chapter shall also include the amount bid by the lender to satisfy the senior insured mortgage at the foreclosure sale.

§ 241.1220 Termination of insurance benefits.

All of the provisions of § 207.253a of this chapter apply to this subpart, except that, the following shall also constitute grounds for terminating the contract of insurance:

(a) The failure of the lender to notify the Commissioner in a timely manner of a foreclosure action initiated by the holder of the senior insured mortgage; and

(b) The failure of the lender when directed by the Commissioner to assign the equity loan or bid an amount necessary to acquire title to the project and convey the project to the Commissioner, in accordance with § 241.1210 of this part.

§ 241.1230 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

§ 241.1235 Cross Default.

In the event the borrower commits a default under a prior recorded insured mortgage and the holder thereof initiates a foreclosure proceeding, said default under the prior recorded insured mortgage shall constitute a default under the equity loan.

§ 241.1240 Recapture of assistance.

In the event of a sale or refinancing of a project formerly or presently subject to an equity loan receiving or which has received, under a plan of action, additional assistance pursuant to section 8 of the United States Housing Act of 1937, there shall be deducted from the revenues of the sale or refinancing an amount equal to the additional assistance provided under the plan of action.

§ 241.1245 Insurance endorsement.

(a) *Endorsement.* The Commissioner shall indicate his insurance of the equity loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the loan is insured and the date of insurance.

(b) *Endorsement of phased loan.* In the event the loan is phased, the Commissioner shall indicate his insurance of each amount by endorsing the original credit instrument and identifying the section of the Act and the regulations under which such amount is insured and the date of insurance.

(c) *Final advance of phased loan.* When all advances of a phased loan have been made and the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he shall indicate on the original credit instrument the total of all advances he has approved for insurance and again endorse such instrument.

§ 241.1250 Effect of endorsement.

From the date the equity loan is endorsed, the Commissioner and the lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

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242.251 Cross-reference.
242.260 Insurance benefits.
242.261 Mortgage insurance premiums—insured mortgages guaranteed in part by the Department of Health and Human Services.

AUTHORITY: Secs. 211, 233(f), 242, National Housing Act (12 U.S.C. 1715b, 1715n(f), 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24658, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 242.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

"Commissioner" means the Federal Housing Commissioner or his or her authorized representatives.

"Hospital" means a facility—

(a) Which provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(b) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(c) Which is a facility licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located) and is:

(1) A public facility owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) A proprietary facility; or

(3) A facility of a private nonprofit corporation or association.

"Mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real

estate is located, together with any credit instrument secured thereby. The mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust securing notes, bonds, or other credit instruments; and by the same instrument or by a separate instrument, it may create a security interest in initial equipment whether or not the equipment is attached to the realty.

"Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

"Mortgagor" means the original borrower under a mortgage and its successors and assigns.

"Project" means a hospital which has been approved by the Commissioner under the provisions of this subpart.

"Secretary of HHS" means the Secretary of Health and Human Services or his or her designee.

"State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

[36 FR 24658, Dec. 22, 1971, as amended at 49 FR 12698, Mar. 30, 1984; 53 FR 16074 and 16076, May 5, 1988]

§ 242.2 Encouragement of certain programs.

The activities and functions provided for in this part shall be carried out by the Federal agencies involved so as to encourage provision of comprehensive health care, including outpatient and preventive care as well as hospitalization, to a defined population, and in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay.

[53 FR 16075, May 5, 1988]

§ 242.3 Applications.

(a) *Prior approval.* An application for insurance of a mortgage under this part shall be considered only in connection with a hospital proposal that has been approved by the Secretary of HHS as substantially in accord with those provisions of Title VI of the Public Health Service Act and its implementing standards that relate to determining need for the facility and general standards of construction and equipment or, in the absence of such standards, any other comparable standard that the Secretary of HHS may determine to be applicable. The approval process entails a determination of the market need and feasibility of the proposal and stresses, on a marketwide basis, the impact of the proposed facility on, and its relationship to, other healthcare facilities and services (particularly other hospitals with mortgages insured under this part); the number and percentage of any excess beds; demographic projections; the reimbursement structure of the proposed hospital (including patient/payer mix); and the probable projected impact on the proposed hospital of general healthcare system trends, such as the development of health maintenance organizations, alternative health care delivery systems, and new reimbursement methods.

(b) *Application fee.* An application fee of $1.50 per thousand dollars of the amount of the loan to be insured shall be paid to the Commissioner at the time the hospital proposal is submitted to the Secretary of HHS for approval.

(c) *Filing of application.* An application for insurance of a mortgage on a project shall be submitted on an approved FHA form by an approved mortgagee and by the sponsors of such project through the local FHA office.

[53 FR 16075, May 5, 1988]

§ 242.5 Certification requirements.

(a) Every application for insurance under this part shall be accompanied by a certificate of the State agency designated in accordance with section 604(a)(1) of the Public Health Service Act for the State in which the project is or will be located, which certificate shall indicate that:

(1) There is a need for the hospital.

(2) There are in force in the State or other political subdivision of the State

in which the proposed hospital will be located reasonable minimum standards of licensure and methods of operation for hospitals and such standards and methods of operation will be applied and enforced with respect to the hospital.

(b) If no such State agency of the type described in paragraph (a) of this section exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the hospital, the Secretary shall not insure any mortgage under this section unless:

(1) The State in which the hospital is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that:

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed hospital on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the hospital;

(iii) Is certified as acceptable as to form and substance by the appropriate State official; and

(iv) Is forwarded to the Secretary of HHS, for approval by HHS and the Secretary of HUD.

(2) If a State does not prepare the study of market need and feasibility described in paragraph (b)(1) of this section, a financial consultant selected by the State may, upon approval by the Secretary of HHS, be substituted to undertake the study.

(3) The State must also comply with the other requirements that must be met by a State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act.

(4) The proposed mortgagor may reimburse the State for the cost of preparing the independent feasibility study described in paragraph (b).

[53 FR 16075, May 5, 1988]

§ 242.7 Commitments.

(a) *Issuance of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

(b) *Types of commitments.* The commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(c) *Term of commitment.* (1) If the commitment fee is paid as required, a commitment shall have a term which is determined as follows:

(i) A commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(ii) A commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, for such additional period as the Commissioner deems necessary for completion of construction.

(2) The term of a commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Commitment fee.* A commitment fee which, when added to the application fee, will aggregate $3 per thousand dollars of the amount of the loan set forth in the commitment, shall be paid within 30 days after the date of the commitment. If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of a commitment, the commitment shall expire on the 30th day.

§ 242.9 Inspection fee.

The commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. Such inspection fee shall be paid at the time of initial endorsement, if the case involves the insurance of advances, or prior to the date construction is begun, if the case involves insurance upon completion.

§ 242.11 Fees on increases.

(a) *Increase in commitment prior to endorsement.* Upon an application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding commitment, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase. The additional commitment fee shall be paid within 30 days after the date of the amended commitment. If the additional commitment fee is not paid within 30 days, the commitment for the increased amount will expire and the previous commitment will be reinstated. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of increase in commitment. Where insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. Where insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or within 30 days after the date of the issuance of the amended commitment, if construction has begun.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the increase is granted.

§ 242.12 Transfer fee.

Upon application for review of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars of the original principal amount of the mortgage shall be paid to the Commissioner. A transfer fee is not required if both parties to the transfer transaction are nonprofit or public organizations.

[53 FR 16075, May 5, 1988]

§ 242.13 Reopening of expired commitments.

An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment which has expired because of failure to pay the commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

§ 242.16 Fees not required.

The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[41 FR 14861, Apr. 8, 1976]

§ 242.17 Refund of fees.

Commitment, inspection, and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a government body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

§ 242.19 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge not to exceed 2 percent of the original principal amount of the mortgage to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 242.21 Eligible hospitals.

The hospital to be financed with a mortgage insured under this part shall involve the construction of a new hospital or the rehabilitation or replacement of an existing structure by an established hospital.

§ 242.23 Eligible mortgagors.

The mortgagor shall be a public mortgagor (i.e., an owner of a public facility), a private nonprofit corporation or association, or a profit-motivated mortgagor. The mortgagor shall be approved by the Commissioner and shall possess the powers necessary and incidental to operating a hospital.

[53 FR 16075, May 5, 1988]

§ 242.24 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39696, Sept. 27, 1989]

§ 242.25 Eligible mortgagees.

The provisions of §§ 203.1 through 203.4 of this chapter and §§ 203.6 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

§ 242.27 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of 90 percent of the Commissioner's estimate of the replacement cost of the hospital, including the equipment to be used in its operation when the proposed improvements are completed and the equipment is installed.

[39 FR 32437, Sept. 6, 1974]

§ 242.29 Adjusted and reduced mortgage amounts.

(a) *Adjusted mortgage amount—rehabilitation projects.* A mortgage financing the rehabilitation of an existing hospital shall be subject to the following limitations, in addition to those set forth in § 242.27:

(1) *Property held unencumbered.* If the mortgagor is the fee simple owner of the property and the ownership is not encumbered by an outstanding indebtedness, the mortgage shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed rehabilitation.

(2) *Property subject to existing mortgage.* If the mortgagor owns the property subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the mortgage shall not exceed the total of the following:

(i) The Commissioner's estimate of the cost of rehabilitation, plus

(ii) Such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such

land and improvements prior to rehabilitation.

(3) *Property to be acquired.* If the property is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the mortgage shall not exceed 90 percent of the total of the following:

(i) The Commissioner's estimate of the cost of rehabilitation, plus

(ii) The actual purchase price of the land and improvements or the Commissioner's estimate (prior to rehabilitation) of the fair market value of such land and improvements, whichever is the lesser.

(b) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

(c) *Reduced mortgage amounts—costs.* The Commissioner may require a reduction in the mortgage amount after completion if 90 percent of the actual cost of development of the project is less than the mortgage amount stated in the commitment.

(d) The Secretary of HHS shall have the discretion to evaluate, on a case by case basis, the amount of cash equity to be required under this section depending upon the financial circumstances of each hospital facility.

[36 FR 24658, Dec. 22, 1971, as amended at 41 FR 11287, Mar. 18, 1976; 53 FR 16075, May 5, 1988]

§ 242.31 Mortgage form and disbursement of mortgage proceeds.

(a) *Mortgage form.* The mortgage shall be in a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) *Disbursement of mortgage proceeds.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage to (or for the account of) the mortgagor or to his or her creditors for his or her account and with his or her consent.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.33 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[49 FR 19459, May 8, 1984]

§ 242.35 Maturity.

The mortgage shall have a maturity not to exceed 25 years from the date amortization begins.

§ 242.37 Payment requirements.

The mortgage shall provide for payments on the first day of each month on account of interest and for payments to principal in accordance with an amortization plan or sinking fund provisions agreed upon by the mortgagor, the mortgagee and the Commissioner.

§ 242.39 Application of payments.

All payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply each payment received to the following items in the order set forth:

(a) Premium charges under the contract of mortgage insurance.

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums.

(c) Interest on the mortgage.

(d) Amortization of the principal of the mortgage.

§ 242.41 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the

mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending 1 month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such items before they become delinquent. The mortgage shall also make provision for adjustments in case such estimated amounts shall prove to be more, or less, than the actual amounts so paid therefor by the mortgagor.

§ 242.43 Covenant for fire insurance.

The mortgage shall contain a covenant requiring the mortgagor to keep the property insured against fire and such other hazards as the Commissioner may indicate. Such insurance shall be in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner to be the value of the project at the time of its completion. The policies evidencing such insurance shall have attached thereto standard mortgagee clauses making losses payable to the mortgagee and the Commissioner, as interests may appear.

§ 242.45 Racial restriction covenant.

The mortgage shall contain a covenant that, until the mortgage has been paid in full or the contract of insurance otherwise terminated, the mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or use of the mortgaged property on the basis of race, color, or creed. This covenant shall be binding upon the mortgagor and his or her assigns and shall provide that upon violation thereof, the mortgagee may, at its option declare the unpaid balance of the mortgage immediately due and payable.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.47 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds or other obligations shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under the contract of mortgage insurance to the Trustee, without liability or accountability to the bond holders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful author-

ity to acquire the bonds of other obligations; or

(3) A charitable or nonprofit organization.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16075, May 5, 1988]

§ 242.49 Mortgage lien.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is the first lien upon and covers the entire project including the equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project or the purchase of the equipment financed with mortgage proceeds.

§ 242.51 Prepayment privilege and prepayment charges.

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Paypayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee, subject to the following:

(1) The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such charge.

(2) Any reduction in the original principal amount of the mortgage which the Commissioner may require pursuant to § 242.29(c) shall not be construed as a prepayment of the mortgage.

(3) No charge shall be made where the prepayment is made from the proceeds of a Federal grant.

(4) No charge shall be made where the prepayment is made from the proceeds of a loan guaranteed by the Secretary of HHS.

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

[36 FR 24658, Dec. 22, 1971, as amended at 37 FR 9111, May 5, 1972; 51 FR 2360, Jan. 16, 1986; 53 FR 16075, May 5, 1988]

§ 242.52 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 242.53 Insured advances—building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 242.54 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure

which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the insured mortgaged property shall have the responsibility for: (1) Insuring the components in the name of the mortgagor while in transit and storage; and (2) delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 50 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

[44 FR 8198, Feb. 8, 1979, as amended at 48 FR 15899, Apr. 13, 1983]

§ 242.55 Funds and finances—deposits and letters of credit.

(a) *Deposits.* Where the Commissioner requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. The deposit shall be held by the mortgagee in a special account or by the depository under an appropriate agreement approved by the Commissioner.

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(b) *Letter of credit.* Where the use of a letter of credit is acceptable to the Commissioner in lieu of a deposit of cash or securities, the letter of credit shall be issued to the mortgagee by a banking institution and shall be unconditional and irrevocable. The mortgagee shall be responsible to the Commissioner for collection under the letter of credit. In the event a demand for payment thereunder is not immediately met, the mortgagee shall forthwith provide a cash deposit equivalent to the undrawn balance of the letter of credit.

§ 242.57 Funds and finances—insured advances—general requirements.

(a) *Establishment of funds.* If the commitment provides for insurance of advances during construction, the mortgagor shall, prior to initial endorsement make each of the following deposits:

(1) An amount determined by the Commissioner as sufficient (when added to the proceeds of the insured mortgage) to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the project. The deposit shall be in cash and shall be held by the mortgagee under an appropriate agreement, approved by the Commissioner, requiring that prior to the advance of any mortgage money, all the cash be disbursed for work and material on the physical improvements and for any other charges and expenses which are payable.

(2) An amount representing all fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner.

(b) *Letter of credit*—(1) *Profit mortgagors.* In the case of a profit mortgagor, the mortgagee may accept a letter of credit in lieu of the cash deposit required by paragraph (a)(2) of this section.

(2) *Public mortgagors and private nonprofit mortgagors.* In the case of a public mortgagor or private nonprofit mortgagor, the mortgagee may accept a letter of credit in lieu of the cash deposit required by paragraphs (a)(1) and (2) of this section. If a letter of credit is accepted in lieu of the cash deposit required by paragraph (a)(1) of this section, the mortgage proceeds may be advanced prior to any demand being made on the letter of credit.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.59 Funds and finances—offsite utilities and streets.

The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

§ 242.61 Funds and finances—insured advances—assurance of completion.

(a) Where the estimated cost of construction or rehabilitation is $500,000 or less and a Hill Burton grant or HHS guaranteed loan is not involved, the mortgagor shall furnish assurance of completion of the project in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as the general contractor, or by the individuals operating as the general contractor.

(b) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed and, in all cases involving Hill Burton grants or HHS guaranteed loans, the

mortgagor shall furnish assurance of completion in the form of corporate surety bonds for payment and performance, each in the minimum amount of 100 percent of the accepted bid prices.

(c) All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies executing a bond and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner.

(d) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements provided for above in this section.

[41 FR 41517, Sept. 22, 1976, as amended at 48 FR 44071, Sept. 27, 1983]

§ 242.63 Prevailing wage determination.

After the filing of the application for insurance and prior to the beginning of construction, the Commissioner shall obtain from the Secretary of Labor a determination as to the wages prevailing for the various classes of laborers and mechanics in the area where the project is to be constructed.

§ 242.65 Wage certificates and payroll records.

No advance under the mortgage shall be eligible for insurance unless there has been filed such wage certificates and payroll records as may be required by the Commissioner to determine that laborers and mechanics employed in the construction of the project have been paid not less than the prevailing wages determined by the Secretary of Labor and any overtime wages at a rate not less than one and one-half times the basic rate of pay for all work time in excess of 8 hours during any workday or in excess of 40 hours during any workweek.

§ 242.67 Labor standards.

(a) *Contract requirements.* Any contract, subcontract, or building loan agreement, executed for the performance of construction or rehabilitation of the hospital, shall contain provisions covering the following requirements:

(1) A requirement for compliance with all applicable regulations of the Secretary of Labor relating to the payment of prevailing wages.

(2) A requirement that each laborer or mechanic employed in the construction or rehabilitation receive compensation at a rate not less than one and one-half times his or her basic rate of pay for all work time in excess of 8 hours during any workday or in excess of 40 hours during any workweek.

(b) *Waiver of compliance with contract requirements-public mortgagor or private nonprofit mortgagor.* In the case of a public mortgagor or a private nonprofit mortgagor, the Commissioner may waive the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction or rehabilitation of the hospital, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and where the Commissioner determines that full credit has been received by the mortgagor for any amount saved through such donated services.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.69 Construction contracts.

(a) *Awarding of contract.* A contract for the cosntruction or rehabilitation of a hospital shall be entered into by a mortgagor with a builder selected by a competitive bidding procedure acceptable to the Commissioner.

(b) *Form of contract.* The construction contract shall be a lump sum form providing for payment of a specified amount.

(c) *Waiver of competitive bidding.* The Commissioner may waive the requirements for compliance with the competitive bidding procedure prescribed in paragraph (a) of this section upon a determination, by the State agency designated in accordance with section 604(a)(1) of the Public Health Service Act for the State in which the project is or will be located and by the Secretary of HHS, that competitive bidding for the construction of the project is not required.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.71 Ineligible contractors.

(a) Contracts relating to the construction of the project shall not be made with a general contractor or a subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest), the name of which is on the list of ineligible contractors or subcontractors established by the Commissioner, or by the Comptroller General under the applicable regulations of the Secretary of Labor.

(b) If the Commissioner determines that a contract has been made contrary to the requirements of paragraph (a) of this section and so notifies the mortgagee, the Commissioner may refuse to insure any subsequent advances of mortgage proceeds.

§ 242.73 Discrimination in employment prohibited.

Any contract or subcontract for the construction or rehabilitation of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, religion, sex, or national origin.

§ 242.75 Supervision of mortgagor—form of regulation.

As long as the Commissioner is the insurer or holder of the mortgage, he or she may regulate the mortgagor by means of a regulatory agreement, corporate charter or such other means as the Commissioner may prescribe.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.77 Supervision of mortgagor—maintenance of project.

The mortgagor shall maintain the project's grounds and buildings and the equipment financed with mortgage proceeds in good repair and shall promptly complete such repairs and maintenance as the Commissioner considers necessary.

§ 242.79 Supervision of mortgagor—books and accounts.

The mortgagor's books and accounts relating to the operation of the physical facilities of the project shall be established in a manner satisfactory to the Commissioner, and shall be kept in accordance with the requirements of the Commissioner as long as the mortgage is insured or held by the Commissioner. The mortgagor shall file with the Commissioner such financial reports as the Commissioner may require.

§ 242.81 Supervision of mortgagor—inspection of facilities by Commissioner.

The mortgaged property (including buildings and equipment) and the books, record and documents relating to the operation of the physical facilities of the project shall be subject to inspection and examination by the Commissioner or his or her authorized representative at all reasonable times.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.83 Supervision of mortgagor—nondiscrimination.

The mortgagor shall deal with employees and applicants for employment and shall make the hospital facilities available for use without discrimination based on race, color, religion, sex, or national origin.

§ 242.85 Zoning, deed or building restrictions.

The project when completed shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations and requirements.

§ 242.87 Property requirements.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 242.1. The mortgage shall cover real estate in which the mortgagor has one of the following interests:

(a) A fee simple title.

(b) A lease for not less than 99 years which is renewable.

(c) A lease having a term of not less than 50 years to run from the date the mortgage is executed.

[36 FR 24658, Dec. 22, 1971, as amended at 50 FR 4647, Feb. 1, 1985]

§ 242.88 Waiver of eligibility requirements for mortgage insurance.

The Secretary may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him or her in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him or her of any property acquired under any section or title of the Act.

[39 FR 2757, Jan. 24, 1974, as amended at 53 FR 16076, May 5, 1988]

§ 242.89 Title requirements.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 242.91 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgage property, satisfactory to him or her, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.93 Miscellaneous mortgages—existing hospitals.

(a) The Commissioner may, under such terms and conditions as he or she may prescribe, insure a mortgage given to finance or refinance an existing hospital that does not have permanent financing, if the construction of such hospital was completed between January 1, 1966, and August 1, 1968.

(b) The aggregate principal balance of all mortgages insured under paragraph (a) of this section and outstanding at any time shall not exceed $20 million.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.94 Eligibility of mortgages covering hospitals in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation or construction of a hospital located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages) as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for an adequate hospital to serve low and moderate income families.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 242.95 Loans to cover 2-year operating losses.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he or she may, in his or her discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under this subpart on the date of the commitment to insure such loan. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(e) *Fee.* A combined application and commitment fee of $3 per thousand dollars of the amount of the loan set forth in the commitment shall be paid within 30 days of the date of the commitment.

[36 FR 24658, Dec. 22, 1971, as amended at 53 FR 16076, May 5, 1988]

§ 242.96 Eligibility of refinancing transactions.

A mortgage given to refinance an existing insured mortgage covering a hospital may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act. Insurance of the new, refinancing mortgage shall be subject to the following limitations:

(a) *Principal amount.* The principal amount of the refinancing mortgage shall not exceed the lesser of (1) the original principal amount of the existing insured mortgage, or (2) the unpaid principal amount of the existing insured mortgage, to which may be added loan closing charges associated with the refinancing mortgage, and costs, as determined by the Commissioner, of improvements, upgrading or additions required to be made to the property.

(b) *Debt service rate.* The monthly debt service payment for the refinancing mortgage may not exceed the debt service payment charged for the existing mortgage.

(c) *Mortgage term.* The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the General Insurance Fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, and the remaining economic life of the property.

(d) *Minimum loan amount.* The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

[50 FR 47727, Nov. 20, 1985; 51 FR 19329, May 29, 1986, as amended at 53 FR 8886, Mar. 18, 1988]

§ 242.97 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mort-

gage exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988]

§ 242.249 Amendment of regulations.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations

§ 242.251 Cross-reference.

All of the provisions of Subpart B, Part 207 of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages on hospitals insured under section 242 of the National Housing Act, except the following:

Sec.
207.258b—Partial payment of claims
207.259—Insurance benefits

[50 FR 38787, Sept. 25, 1985]

§ 242.260 Insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to mortgages on hospitals insured under this subpart, except that in a case where the mortgage involves the financing or refinancing of an existing hospital pursuant to § 242.93 and the commitment for insuring such mortgage is issued on or after April 1, 1969, the insurance claim shall be paid in cash unless the mortgagee files a written request for payment in debentures. If such a request is made the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

§ 242.261 Mortgage insurance premiums—insured mortgages guaranteed in part by the Department of Health and Human Services.

Where a portion of a mortgage insured under this subpart is guaranteed by the Department of Health and Human Services under Title VII of the Public Health Service Act, the mortgage insurance premiums required in accordance with § 207.252 of this chapter will be charged only on that portion of the mortgage not covered by the guarantee by HHS.

[42 FR 59676, Nov. 18, 1977]

PART 243—PET OWNERSHIP IN HOUSING FOR THE ELDERLY OR HANDICAPPED

Subpart A—General

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243.35 Implementation of lease provisions.

Subpart E—Nuisance or Threat to Health or Safety

243.40 Nuisance or threat to health or safety.
243.45 Protection of the pet.

AUTHORITY: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983, 12 U.S.C. 1701r-1; and sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

SOURCE: 51 FR 43296, Dec. 1, 1986, unless otherwise noted.

Subpart A—General

§ 243.1 Purpose.

(a) This part implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1) as it pertains to the housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner. 24 CFR Part 942 implements this provision as it pertains to the public housing programs administered by the Assistant Secretary for Public and Indian Housing.

(b) Section 227 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may as a condition of tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units, or restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets. The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elderly or handicapped. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

[51 FR 43296, Dec. 1, 1986; 52 FR 17949, May 13, 1987]

§ 243.2 Exclusion for animals that assist the handicapped.

(a) This part does not apply to animals that are used to assist the handicapped. This exclusion applies to animals that reside in projects for the elderly or handicapped, as well as to animals that visit these projects. A project owner may require resident animals to qualify for this exclusion. Exclusion must be granted if the tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is handicapped, the animal has been trained to assist persons with that specific handicap, and the animal actually assists the handicapped individual. Project owners may not apply or enforce any pet rules developed under this part against individuals with animals that are used to assist the handicapped.

(b) Nothing in this part:

(1) Limits or impairs the rights of handicapped individuals,

(2) Authorizes project owners to limit or impair the rights of handicapped individuals, or

(3) Affects any authority that project owners may have to regulate animals that assist the handicapped, under Federal, State, or local law.

§ 243.3 Definitions.

(a) *Common household pet* means a domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pet does not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulation shall apply. This definition shall not include animals that are used to assist the handicapped.

(b) *Elderly or handicapped family* means an elderly or handicapped person or family for purposes of the program under which a project for the elderly or handicapped is assisted or has its mortgage insured.

(c) *Project for the elderly or handicapped* means a specific rental or co-

operative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(1) That is assisted under section 202 of the Housing Act of 1959 (Housing for the Elderly or Handicapped);

(2)(i) That was designated for occupancy by elderly or handicapped families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and (ii) that is assisted (with or without HUD mortgage insurance) under section 221(d)(3) (BMIR) of the National Housing Act or 24 CFR Part 236;

(3)(i) That was designated for occupancy by elderly or handicapped families when the commitment to insure the mortgage was issued, or if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and

(ii) That is insured under section 221(d)(3) (Market Rate) or section 221(d)(4) of the National Housing Act, or 24 CFR Part 231 (Housing Mortgage Insurance for the Elderly);

(4)(i) For which preference in tenant selection is given (with HUD or PHA approval) for all units in the project to elderly or handicapped families and (ii) that is assisted under Part 880 (Section 8 New Construction), Part 881 (Section 8 Substantial Rehabilitation), Part 882 (Subparts D and E) (Section 8 Moderate Rehabilitation), Part 883 (Section 8 State Housing Agency programs), Part 884 (Section 8 Rural Set-Aside), or Part 886 (Subparts A and C) (Section 8 Loan Management and Property Disposition).

(5)(i) For which preference in tenant selection is given for all units in the project to elderly or handicapped families and (ii) that is assisted under 24 CFR Part 850 (Housing Development Grant program); or

(6)(i) That is owned by HUD and (ii) for which HUD gives preference in tenant selection for all units in the project to elderly or handicapped families.

This term does not include health and care facilities that have mortgage insurance under the National Housing Act, such as nursing homes, intermediate care facilities, or board and care homes with insurance under 24 CFR Part 232 and hospitals with insurance under 24 CFR Part 242. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (c) (1) through (6) of this section, even if the property is adjacent to or under joint or common management with such specific property.

(d) *Project owner* means an owner (including HUD, where HUD is the owner) or manager of a project for the elderly or handicapped, or an agent authorized to act for an owner or manager of such housing.

§ 243.4 Effective date.

This part shall be effective on March 2, 1987. However, project owners shall have until May 1, 1987 to implement the provisions of this part.

[52 FR 3795, Feb. 6, 1987]

Subpart B—Nondiscrimination Provisions

§ 243.10 Prohibition against discrimination.

Except as otherwise specifically authorized under this part, no owner of a project for the elderly or handicapped may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in that person's dwelling unit.

§ 243.15 Notice to tenants.

(a) Along with the notice of proposed pet rules described in

§ 243.22(b), project owners shall serve written notice on all tenants of projects for the elderly or handicapped in occupancy at the time of service of the notice, stating that:

(1) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules promulgated under Subpart C of this part;

(2) Animals that are used to assist the handicapped are excluded from the requirements of this part, as provided in § 243.2; and

(3) Tenants may request that their leases be amended in accordance with § 243.30 to permit common household pets.

(b) Project owners shall provide to each applicant for tenancy when he or she is offered a dwelling unit in the project a copy of the current pet rules developed under § 243.22 (as well as any current proposed rule or proposed amendment to an existing rule) and the written notice specified in paragraphs (a)(1) and (2) of this section:

(Approved by the Office of Management and Budget under control number 2502-0342)

Subpart C—Rules Governing the Keeping of Pets

§ 243.20 Content of pet rules.

(a) *General.* The project owner shall prescribe reasonable rules to govern the keeping of common household pets. The pet rules must include the mandatory rules described in paragraph (b) of this section and may include the discretionary provisions described in paragraph (c) of this section. Since the "reasonableness" of a rule will frequently depend on the facts and circumstances in each case, this part does not define with specificity the limits of the project owners' discretion to promulgate pet rules. As a matter of general guidance, however, the pet rules must be reasonably related to furthering a legitimate interest of the project owner, such as the owner's interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and the owner's financial interest in it. In addition, the pet rules should be drawn narrowly to achieve the owner's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners. Where a project owner has discretion to prescribe pet rules under this section, the owner may vary the rules' content among projects owned by the project owner, provided that the applicable rules are reasonable and do not conflict with any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(b) *Mandatory rules.* The project owner must prescribe the following pet rules:

(1) *Inoculations.* The pet rules shall require pet owners to have their pets inoculated in accordance with State and local laws.

(2) *Sanitary standards.* The pet rules shall prescribe sanitary standards to govern the disposal of pet waste. These rules may designate areas on the project premises for pet exercise and the deposit of pet waste; may forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas; may require pet owners to remove and properly dispose of all removable pet waste; and may require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area in the project is designated for such purposes. In the case of cats and other pets using litter boxes, the pet rules may require the pet owner to change the litter (but not more than twice each week), may require pet owners to separate pet waste from litter (but not more than once each day), and may prescribe methods for the disposal of pet waste and used litter. If there is an applicable State or local law or regulation governing the disposal of pet waste, the pet rules prescribed under this paragraph (b)(2) shall not conflict with such law or regulation. If such a conflict may exist, the State and local law or regulations shall apply.

(3) *Pet Restraint.* The pet rules shall require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible

individual while on the common areas of the project. If there is an applicable State or local law or regulation governing pet restraint, the pet rules prescribed under this paragraph (b)(3) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(4) *Registration.* The pet rules shall require pet owners to register their pets with the project owner. The pet owner must register the pet before it is brought onto the project premises, and must update the registration at least annually. The project owner may coordinate the annual update with the annual reexamination of tenant income, if applicable. The registration must include:

(i) A certificate signed by a licensed veterinarian or a State or local authority empowered to inoculate animals (or designated agent of such an authority) stating that the pet has received all inoculations required by applicable State and local law;

(ii) Information sufficient to identify the pet and to demonstrate that it is a common household pet; and

(iii) The name, address, and phone number of one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet. The project owner may require the pet owner to provide additional information necessary to ensure compliance with the discretionary rules prescribed under paragraph (c) of this section, and shall require the pet owner to sign a statement indicating that he or she has read the pet rules and agrees to comply with them. The pet rules shall permit the project owner to refuse to register a pet if the pet is not a common household pet; if the keeping of the pet would violate any applicable house pet rule; if the pet owner fails to provide complete pet registration information or fails annually to update the pet registration; or if the project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament may be considered as a factor in determining the prospective pet owner's ability to comply with the pet rules and other lease obligations. The project owner may not refuse to register a pet based on a determination that the pet owner is financially unable to care for the pet or that the pet is inappropriate, based on the therapeutic value to the pet owner or the interests of the property or existing tenants. The pet rules shall require the project owner to notify the pet owner if the project owner refuses to register a pet. The notice shall state the basis for the project owner's action and shall be served on the pet owner in accordance with the requirements of § 243.22(f)(1)(i) or (ii). The notice of refusal to register a pet may be combined with a notice of pet violation as required in § 243.24. If there is an applicable State or local law or regulation governing the registration of pets, the pet rules prescribed under this paragraph (b)(4) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(c) *Discretionary rules.* The project owner may prescribe other reasonable rules to govern the keeping of common household pets. These rules may include, but are not limited to, consideration of the following factors:

(1) *Density of tenants and pets.* (i) The pet rules established under this section may take into account tenant and pet density. The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. Under these rules, the number of four-legged, warm-blooded pets may be limited to one pet in each dwelling unit. In the case of group homes, the pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home. Under these rules, the number of four-legged, warm-blooded pets may be limited to one pet in each group home. Other than these limitations, the pet rules may not limit the total number of pets allowed in the project. If there is an applicable State or local law or regulation governing the density of tenants or pets (or both) with respect to the ownership or presence of pets in dwelling accommo-

dations, the pet rules prescribed under this paragraph (c)(1) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(ii) As used in this paragraph (c)(1), the term "group home" means a small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically handicapped who require a planned program of continual supportive services or supervision (other than continual nursing, medical, or psychiatric care).

(2) *Pet size and pet type.* The pet rules may place reasonable limitations on the types of pets and the size and weight of pets allowed in the project. If there is an applicable State or local law or regulation governing the size, weight or type of pets allowed in dwelling accommodations, the pet rules prescribed under this paragraph (c)(2) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(3) *Potential financial obligation of tenants.* (i) The pet rules may require tenants who own or keep cats or dogs in their units to pay a refundable pet deposit. This deposit is in addition to any financial obligation generally imposed on tenants of the project. The project owner may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the project, including (but not limited to) the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit, and the cost of animal care facilities under § 243.45. The owner shall refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a dog or cat in the dwelling unit.

(ii) The maximum amount of the pet deposit that may be charged by the project owner on a per dwelling unit basis is determined as follows:

(A) For tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under 24 CFR Part 215 (Rent Supplement Payments), Part 236 (Subpart D—Rental Assistance Payments), Part 880 (Section 8 New Construction), Part 881 (Section 8 Substantial Rehabilitation), Part 882 (Subparts D and E) (Section 8 Moderate Rehabilitation), Part 883 (Section 8 State Housing Agency Program), Part 884 (Section 8 Rural Set-Aside), Part 885 (Loans for Housing for the Elderly or Handicapped), or Part 886 (Subparts A and C) (Section 8 Loan Management and Property Disposition) and for tenants occupying lower income units under 24 CFR Part 850 (Housing Development Grant program), the pet deposit shall not exceed an amount periodically fixed by HUD by publication of a Notice in the FEDERAL REGISTER. The pet rules shall provide for gradual accumulation of the deposit by the pet owner through an initial payment not to exceed $50 when the pet is brought onto the premises, and subsequent monthly payments not to exceed $10 per month until the amount of the deposit is reached. The owner may (subject to the HUD-prescribed limit) increase the amount of the pet deposit by amending the house pet rules in accordance with § 243.22(e). The house pet rules shall provide for gradual accumulation of any such increase not to exceed $10 per month for all deposit amounts that are being accumulated.

(B) For tenants whose rents are not subsidized under the programs listed in paragraph (c)(3)(ii)(A) of this section, but who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under 24 CFR Part 236 (Subpart C—Interest Reduction Payments), section 202 of the Housing Act of 1959, or section 221(d)(3)(BMIR) of the National Housing Act, the pet deposit shall not exceed an amount periodically fixed by HUD by publication of a Notice in the FEDERAL REGISTER. The house pet rules may provide for gradual accumulation of the deposit by the pet owner. The project owner may (subject to the HUD-prescribed limits) increase the amount of the pet deposit by amending the house pet rules in accordance with § 243.22(e).

(C) For all other tenants of projects for the elderly or handicapped, the pet deposit shall not exceed one month's

rent at the time the pet is brought onto the premises. The house pet rules may permit gradual accumulation of the pet deposit by the pet owner.

(iii) In fixing the amount of the pet deposit under paragraphs (c)(3)(ii) (A) and (B), HUD will consider factors such as projected, estimated expenses directly attributable to the presence of pets in the project; the ability of project owners to offset such expenses by use of security deposits or HUD-reimbursable expenses; and the lower income status of tenants of projects for the elderly or handicapped. Any pet deposit that is within the applicable amount set by HUD under paragraphs (c)(3)(ii) (A) and (B) or its applicable limit under paragraph (c)(3)(ii)(C) shall be deemed a reasonable amount for purposes of this part.

(iv) The pet rules may permit the project owner to impose a separate pet waste removal charge of up to five dollars ($5) per occurrence on pet owners that fail to remove pet waste in accordance with the prescribed pet rules. Any pet waste removal charge that is within this five dollar ($5) limitation shall be deemed to be a reasonable amount for the purposes of this part.

(v) The pet deposit and pet waste removal charge described in this paragraph (c)(3) are not part of rent payable by the tenant. Except as provided in this paragraph (c)(3), the project owner may not prescribe pet rules that impose on pet owners additional financial obligations that are designed to compensate the project owner for the costs associated with the presence of pets in the project, including (but not limited to) requiring pet owners to obtain liability or other insurance to cover damage caused by the pet, to agree to be strictly liable for all damages caused by the pet where this liability is not otherwise imposed by State or local law, or to indemnify the project owner for pet-related litigation or attorney's fees.

(vi) If there is an applicable State or local law or regulation governing the financial obligations of tenants for their pets, the pet rules prescribed under this paragraph (c)(3) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(4) *Standards of pet care.* The pet rules may prescribe standards of pet care and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, project employees, and the public. Permitted rules may require pet owners to have their dogs and cats spayed or neutered; may bar pets from specified common areas (such as lobbies, laundry rooms, and social rooms), unless the exclusion will deny a pet reasonable ingress and egress to the project or building; may limit the length of time that a pet may be left unattended in a dwelling unit; and may require the pet owner to control noise and odor caused by a pet. The pet rules may not require pet owners to have any pet's vocal cords removed. If there is an applicable State or local law or regulation governing the care and handling of pets, the pet rules prescribed under this paragraph (c)(4) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(5) *Pet licensing.* The pet rules may require pet owners to license their pets in accordance with applicable State and local laws and regulations. (Failure of the pet rules to contain this requirement does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing requirements.)

(6) *Pets temporarily on the premises.* The pet rules may exclude from the project pets that are not owned by a tenant that are to be kept temporarily on the project premises. For the purposes of this paragraph (c)(6), pets are to be kept "temporarily" if they are to be kept in the tenant's dwelling accommodations for a period of less than 14 consecutive days and nights. The Department, however, encourages project owners to permit the use of a visiting pet program sponsored by a humane society or other non-profit organization. If there is an applicable State or local law or regulation governing pets temporarily in dwelling accommodations, the pet rules prescribed under this paragraph (c)(6) shall not conflict with such law or reg-

ulation. If such a conflict may exist, the State or local law or regulation shall apply.

(Approved by the Office of Management and Budget under control number 2502-0342)

§ 243.22 Procedure for development of pet rules.

(a) *General.* Project owners shall use the procedures specified in this section to promulgate the pet rules referred to in § 243.20.

(b) *Development and notice of proposed pet rules.* Project owners shall develop proposed rules to govern the owning or keeping of common household pets in projects for the elderly or handicapped. Notice of the proposed pet rules shall be served on each tenant of the project as provided in paragraph (f) of this section. The notice shall include the text of the proposed rules, state that tenants or tenant representatives may submit written comments on the rules, and state that all comments must be submitted to the project owner no later than 30 days from the effective date of the notice of the proposed rules. The notice may also announce the date, time, and place for a meeting to discuss the proposed rules (as provided in paragraph (c) of this section).

(c) *Tenant consultation.* Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. The project owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the project owner before the end of the comment period.

(d) *Development and notice of final pet rules.* The project owner shall develop the final rules after reviewing tenants' written comments and written summaries of any owner-tenant meetings. The project owner may meet with tenants and tenant representatives to attempt to resolve issues raised by the comments. Subject to this part, the content of the final pet rules, however, is within the sole discretion of the project owner. The project owner shall serve on each tenant of the project, a notice of the final pet rules as provided in paragraph (f) of this section. The notice must include the text of the final pet rules and must specify the effective date of the final pet rules.

(e) *Amendment of pet rules.* The project owner may amend the pet rules at any time by following the procedure for the development of pet rules specified in paragraphs (b) through (d) of this section.

(f) *Service of notice.* (1) The project owner must serve the notice required under this section by: (i) Sending a letter by first class mail, properly stamped and addressed to the tenant at the dwelling unit, with a proper return address; or (ii) Serving a copy of the notice on any adult answering the door at the tenant's leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by attaching the notice to the door; or (iii) for service of notice to tenants of a high-rise building, posting the notice in at least three conspicuous places within the building and maintaining the posted notices intact and in legible form for 30 days. For purposes of this paragraph (f), a high-rise building is a structure that is equipped with an elevator and has a common lobby.

(2) For purposes of computing time periods following service of the notice, service is effective on the day that all notices are delivered or mailed, or in the case of service by posting, on the day that all notices are initially posted.

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§ 243.24 Pet rule violation procedures.

(a) *Notice of pet rule violation.* If a project owner determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the owning or keeping of pets; the project owner may serve a written notice of pet rule

violation on the pet owner in accordance with § 243.22(f)(1) (i) or (ii). The notice of pet rule violation must:

(1) Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;

(2) State that the pet owner has 10 days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation;

(3) State that the pet owner is entitled to be accompanied by another person of his or her choice at the meeting; and

(4) State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

(b) (1) *Pet rule violation meeting.* If the pet owner makes a timely request for a meeting to discuss an alleged pet rule violation, the project owner shall establish a mutually agreeable time and place for the meeting but no later than 15 days from the effective date of service of the notice of pet rule violation (unless the project owner agrees to a later date). At the pet rule violation meeting, the pet owner and project owner shall discuss any alleged pet rule violation and attempt to correct it. The project owner may, as a result of the meeting, give the pet owner additional time to correct the violation.

(2) *Notice for pet removal.* If the pet owner and project owner are unable to resolve the pet rule violation at the pet rule violation meeting, or if the project owner determines that the pet owner has failed to correct the pet rule violation within any additional time provided for this purpose under paragraph (b)(1) of this section, the project owner may serve a written notice on the pet owner in accordance with § 243.22(f)(1) (i) or (ii) (or at the meeting, if appropriate), requiring the pet owner to remove the pet. The notice must:

(i) Contain a brief statement of the factual basis for the determination and the pet rule or rules that have been violated;

(ii) State that the pet owner must remove the pet within 10 days of the effective date of service of the notice of pet removal (or the meeting, if notice is served at the meeting); and

(iii) State that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

(c) *Initiation of procedures to remove a pet or terminate the pet owner's tenancy.* (1) The project owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless (i) the pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner) and (ii) the pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease and applicable regulations.

(2) The project owner may initiate procedures to remove a pet under § 243.40 at any time, in accordance with the provisions of applicable State or local law.

(Approved by the Office of Management and Budget under control number 2502-0342)

§ 243.26 Rejection of units by applicants for tenancy.

(a) An applicant for tenancy in a project for the elderly or handicapped may reject a unit offered by a project owner if the unit is in close proximity to a dwelling unit in which an existing tenant of the project owns or keeps a common household pet. An applicant's rejection of a unit under this section shall not adversely affect his or her application for tenancy in the project, including (but not limited to) his or her position on the project waiting list or qualification for any tenant selection preference.

(b) Nothing in this part imposes a duty on project owners to provide alternate dwelling units to existing or prospective tenants because of the proximity of common household pets to a particular unit or the presence of such pets in the project.

Subpart D—Lease Provisions

§ 243.30 Lease provisions.

(a) *Pet provisions.* The leases for all tenants of projects for the elderly or handicapped shall state that tenants are permitted to keep common household pets in their dwelling units (subject to the provisions of this part and the pet rules promulgated under § 243.20); shall incorporate by reference the pet rules promulgated by the project owner; shall provide that the tenant agrees to comply with these rules; and shall state that violation of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both), in accordance with the provisions of this part and applicable regulations and State or local law. These regulations include 24 CFR Part 247 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Section 8 Housing Assistance Payments programs (*see* 24 CFR 880.607, 881.607, 882.511, 883.708, 884.216, 886.128, and 886.328).

(b) *Inspections.* In addition to other inspections permitted under the lease, the leases for all tenants of projects for the elderly or handicapped may state that the project owner may, after reasonable notice to the tenant and during reasonable hours, enter and inspect the premises. The lease shall permit entry and inspection only if the project owner has received a signed, written complaint alleging (or the project owner has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

(c) *Emergencies.* (1) If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the project owner may place a provision in tenant leases permitting the project owner to enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days. The lease shall permit the project owner to enter the premises and remove the pet or take such other permissible action only if the project owner requests the pet owner to remove the pet from the project immediately, and the pet owner refuses to do so, or if the project owner is unable to contact the pet owner to make a removal request. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet. The cost of the animal care facility shall be paid as provided in § 243.45.

(2) The project owner may place a provision in tenant leases permitting the project owner to enter the premises, remove the pet, and place the pet in a facility that will provide care and shelter, in accordance with the provisions of § 243.45. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet.

§ 243.35 Implementation of lease provisions.

The lease for each tenant of a project for the elderly or handicapped who is admitted on or after the date on which the project owner implements this part shall contain the lease provisions described in § 243.30(a) and, if applicable, § 243.30 (b) and (c). The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the provisions described in § 243.30(a) and, if applicable, § 243.30 (b) and (c):

(a) Upon renewal of the lease and in accordance with any applicable regulation (*see,* for example, 24 CFR 247.4(d)); or

(b) When a tenant registers a common household pet under § 243.20(b)(4).

Subpart E—Nuisance or Threat to Health or Safety

§ 243.40 Nuisance or threat to health or safety.

Nothing in this part prohibits a project owner or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

§ 243.45 Protection of the pet.

If the health or safety of a pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet, the project owner may contact the responsible party or parties listed in the pet registration required under § 243.20(b)(4)(iii). If the responsible party or parties are unwilling or unable to care for the pet, or the project owner, despite reasonable efforts, has been unable to contact the responsible party or parties, the project owner may contact the appropriate State or local authority (or designated agent of such an authority) and request the removal of the pet. If there is no State or local authority (or designated agent of such an authority) authorized to remove a pet under these circumstances and the project owner has placed a provision in the lease agreement (as described in § 243.30(c)(2)), the project owner may enter the pet owner's unit, remove the pet, and place the pet in a facility that will provide care and shelter until the pet owner or a representative of the pet owner is able to assume responsibility for the pet, but not longer than 30 days. The cost of the animal care facility provided under this section shall be borne by the pet owner. If the pet owner (or the pet owner's estate) is unable or unwilling to pay, the cost of the animal care facility may be paid from the pet deposit, if imposed under the pet rules.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

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AUTHORITY: Secs. 211, 1104, National Housing Act (12 U.S.C. 1715b, 1749aaa-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 36 FR 24663, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

DEFINITIONS

§ 244.1 Definitions.

As used in this subpart, the term:

(a) "Act", "Commissioner", "mortgagor", and "mortgagee" shall have the same meaning as prescribed in § 207.251 of this chapter.

(b) "Group practice facility" means an establishment designed for operation primarily by a medical or dental group which provides preventive, diagnostic, and treatment services to ambulatory patients under the professional supervision of persons licensed to practice dentistry, medicine, osteopathy, optometry, or podiatry in the State.

(c) "Group practice unit" means a private nonprofit organization of one of the following types:

(1) An organization which undertakes to provide (directly or through arrangements with a medical or dental group) complete dental, medical, optometric, osteopathic or podiatric care, or any combination thereof. It may also provide health insurance to members or subscribers on a group practice prepayment basis.

(2) An organization established for the purpose of providing dental, medical, optometric, osteopathic, or podiatric care of for performing functions related to such care through arrangements for the use of the group practice facility by a medical or dental group.

(d) "Medical or dental group" means a partnership or other association of persons licensed to practice dentistry, medicine, optometry, osteopathy, or podiatry in the State who, as their principal professional activity and as a group responsibility, engage in the coordinated practice of their profession in one or more group practice facili-

ties. The group shall share common overhead expenses, shall jointly establish medical and other records and shall jointly use substantial portions of the equipment and the services of professional, technical, and administrative staffs. It shall be composed of such types of professional personnel and shall make available such health services as may be required to meet the standards prescribed by the Commissioner.

(e) "Mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with any credit instrument or instruments secured thereby. The mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust securing notes, bonds, or other credit instruments; and by the same instrument or by a separate instrument, it may create a security interest in initial equipment whether or not the equipment is attached to the realty.

(f) "Nonprofit organization" means a corporation, association, foundation, trust, or other organization no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual. The provision by a nonprofit organization of personal health services to members or subscribers or their dependents under a plan which may also provide for other services or insurance benefits, shall not make the organization ineligible under this definition.

(g) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

[36 FR 24663, Dec. 22, 1971, as amended at 39 FR 32437, Sept. 6, 1974; 49 FR 12698, Mar. 30, 1984]

Preliminary Examination

§ 244.5 Preliminary examination.

Prior to the filing of an application, the sponsor of a proposed group practice facility may request and shall be given an analysis of the project. A fee of $400 shall accompany the request for analysis.

Application, SAMA Letter, Commitments, Fees and Charges by Mortgagee

§ 244.10 Application, SAMA letter, commitments and fees.

(a) *Application.* An application for the issuance of a site appraisal and market analysis (SAMA) letter must be submitted by the project sponsor. An application for a conditional or firm commitment for instance of a mortgage on a group practice facility shall be submitted by an approved mortgagee and by the sponsor. Such applications shall be submitted to the local HUD field office on FHA-approved forms. No application shall be considered unless accompanied by the exhibits required by the form. An applicant may initially elect to submit an application for a SAMA letter, a conditional commitment or a firm commitment depending upon the completeness of the drawings, specifications and other required exhibits.

(b) *SAMA letter, conditional and firm commitment*—(1) *SAMA letter.* The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project, and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a commitment is received before expiration of the SAMA letter:

(i) The land value fully improved (with offsite improvements installed).

(ii) The acceptability of the proposed project site, the proposed composition of the group practice and the market for the proposed services. Where the application is not acceptable as submitted, but can be made acceptable by a change in composition or

type of service, the SAMA letter may establish acceptable alternative plans.

(2) *Conditional commitment.* The issuance of a conditional commitment indicates completion of technical processing involving the estimated cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, the supportable cost, the financial and credit capacity of the sponsorship, financial requirements and the mortgage amount.

(3) *Firm commitment and types of firm commitment.* The issuance of a firm commitment evidences the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage upon completion of the improvements.

(c) *Term of SAMA letter, conditional commitment and firm commitment—*(1) *SAMA letter.* A SAMA letter shall be effective for whatever term is specified in the letter.

(2) *Conditional commitment.* A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(3) *Firm commitment*—(i) Insurance of advances: A firm commitment to insure advances shall be effective for a period of not more than 60 days from the date of issuance.

(ii) Insurance upon completion: A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and, if construction is begun as required, the commitment shall be effective for such additional period as the Commissioner estimates is necessary for the completion of construction.

(iii) The term of either a SAMA letter, or conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Fees*—(1) *Application fee—SAMA letter.* An application fee of $1 per thousand dollars of the requested mortgage amount shall accompany the application for a SAMA letter.

(2) *Application fee—conditional commitment.* An application-commitment fee of $1 per thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the application fee for an unexpired SAMA letter has been collected. A fee of $2 per one thousand dollars of the requested mortgage amount shall accompany the application for conditional commitment in cases in which the SAMA application fee has been paid but the SAMA letter has expired or in cases in which a SAMA application fee has not been paid.

(3) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee which when added to prior fees received in connection with applications for a SAMA letter or a conditional commitment, will aggregate $3 per thousand dollars of the requested mortgage amount to be insured.

(4) *Rejection of an application.* A significant deviation in an application from the terms or findings arrived at in an earlier stage, as evidenced by the SAMA letter or conditional commitment, shall be grounds for rejection of an application for conditional or firm commitment, respectively. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(e) *Inspection fee.* The commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(1) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(2) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

(f) *Fees on increases*—(1) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application-commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars

of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses during the first two years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(g) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted.

(h) *Transfer fee.* Upon application for approval of a case involving the transfer of physical assets or involving the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage.

(i) *Refund of fees.* If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application fee or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other type of legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[36 FR 24663, Dec. 22, 1971, as amended at 39 FR 12006, Apr. 2, 1974; 40 FR 22829, May 27, 1975; 41 FR 14861, Apr. 8, 1976]

§ 244.11 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 244.12 Unavailability of conventional financing.

The application for insurance shall be accompanied by such evidence as the Commissioner may require to establish that the mortgagor or sponsor has been unable to obtain an uninsured mortgage loan for financing the proposed project with terms comparable to those prescribed in §§ 244.30[1] through 244.50 for a mortgage insured under this subpart.

§ 244.15 Extension of commitment.

When the mortgagee has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

ELIGIBLE MORTGAGORS

§ 244.20 Eligible mortgagors.

In order to be eligible as a mortgagor under this subpart, the applicant must:

(a) Establish to the satisfaction of the Commissioner that it qualifies as a group practice unit, as that term is defined in § 244.1(c); and

(b) Meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39696, Sept. 27, 1989]

ELIGIBLE MORTGAGEES

§ 244.25 Qualifications for lenders.

The provisions of §§ 203.1 through 203.4 of this chapter and §§ 203.6 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

[1] Section 244.30 was removed at 39 FR 32438, Sept. 6, 1974.

MAXIMUM MORTGAGE AMOUNTS

§ 244.32 Maximum mortgage amount—loan-to-value limitation.

The mortgage shall involve a principal obligation not in excess of 90 percent of the Commissioner's estimate of the replacement cost of the property when construction or rehabilitation is completed. The cost of the property may include the land and proposed physical improvements, equipment, utilities within the boundaries of the property, architect's fees, taxes and interest accruing during construction, and other miscellaneous charges approved by the Commissioner as incident to the construction or rehabilitation.

[39 FR 32438, Sept. 6, 1974]

§ 244.35 Adjusted mortgage amount—rehabilitation projects.

In addition to meeting the loan-to-value limitation of § 244.32, a mortgage financing the rehabilitation of existing improvements shall be subject to the following additional limitations:

(a) *Property held unencumbered.* If the mortgagor is the fee simple owner of the property and the ownership is not encumbered by an outstanding indebtedness, the mortgage shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed rehabilitation.

(b) *Property subject to existing mortgage.* If the mortgagor owns the property subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the mortgage shall not exceed the total of the following:

(1) The Commissioner's estimate of the cost of rehabilitation, plus

(2) Such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to rehabilitation.

(c) *Property to be acquired.* If the property is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the mortgage shall not exceed 90 percent of the total of the following:

(1) The Commissioner's estimate of the cost of rehabilitation, plus

(2) The actual purchase price of the land and improvements or the Commissioner's estimate (prior to rehabilitation) of the fair market value of such land and improvements, whichever is the lesser.

[36 FR 24663, Dec. 22, 1971, as amended at 39 FR 32438, Sept. 6, 1974]

§ 244.37 Reduced mortgage amount—leaseholds.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value or replacement cost of the property in fee simple.

[41 FR 11287, Mar. 18, 1976]

§ 244.38 Loans to cover 2-year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 244.45 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 244.40 Mortgage provisions.

All of the provisions of § 207.3 of this chapter apply to mortgages insured under this subpart. These provisions prescribe the mortgage form and the obligation of the mortgagee for disbursing the mortgage proceeds.

ELIGIBLE MORTGAGES

§ 244.45 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

(c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

[36 FR 24663, Dec. 22, 1971, as amended at 49 FR 19459, May 8, 1984]

§ 244.47 Maximum mortgage maturity.

The mortgage shall have a maturity not to exceed 25 years from the date of the beginning of amortization of the mortgage, and shall contain amortization or sinking fund provisions satisfactory to the Commissioner.

§ 244.50 Payment requirements.

The mortgage shall provide for payments on the first day of each month on account of interest and for payments to principal in accordance with an amortization plan or sinking fund provisions agreed upon by the mortgagor, the mortgagee and the Commissioner.

§ 244.52 Application of payments.

All payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single pay-

ment. The mortgagee shall apply each payment received to the following items in the order set forth:

(a) Premium charges under the contract of insurance.

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums.

(c) Interest on the mortgage.

(d) Amortization of the principal of the mortgage.

§ 244.55 Accumulation of accruals.

All of the provisions of § 207.12 of this chapter apply to mortgages insured under this subpart. These provisions relate to payments to be made by the mortgagor to be accumulated by the mortgagee for paying the annual mortgage insurance premium, ground rents, taxes, water rates, special assessments, and fire and other hazard insurance premiums.

§ 244.57 Mortgage covenants.

The mortgage shall contain covenants relating to liens, property insurance, and use of property as prescribed in §§ 207.9, 207.10 and 207.16 of this chapter.

§ 244.58 Racial restriction covenant.

Under the mortgage instrument, the mortgagor shall covenant that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or use of the mortgaged property on the basis of race, color, or creed. This covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

§ 244.60 Issuance of bonds secured by trust indenture.

All of the provisions of § 207.15 of this chapter apply to mortgages insured under this subpart. These provisions relate to the issuance of bonds secured by a trust indenture.

§ 244.62 Mortgage lien.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is the first lien upon and covers the entire project including the equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed, and the equipment financed with mortgage proceeds, are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction on rehabilitation of the project or the purchase of the equipment financed with mortgage proceeds.

§ 244.65 Prepayment privilege, prepayment and late charges.

(a) *Prepayment privilege.* The mortgage indebtedness shall not be prepaid in full and the Commissioner's controls shall not be terminated unless the Commissioner gives his prior consent to such prepayment.

(b) *Prepayment charge.* The mortgage may contain a provision for such additional charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements shall not be construed as a prepayment of the mortgage.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed two cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected

from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 244.67 Insured advances—building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 244.68 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the insured mortgaged property shall have the responsibility for: (1) Insuring the components in the name of the mortgagor while in transit and storage; and (2) delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the morgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100

percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

[44 FR 8199, Feb. 8, 1979, as amended at 48 FR 15899, Apr. 13, 1983]

§ 244.69 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the loan exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988]

Wage Standards

§ 244.70 Prevailing wage requirements.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall contain provisions requiring compliance with all applicable regulations of the Secretary of Labor relating to the payment of prevailing wages. In addition, a requirement shall be included that each laborer or mechanic employed on the project receive compensation at a rate not less than one and one-half times his basic rate of pay for all work time, in excess of 8 hours during any workday or in excess of 40 hours during any workweek.

§ 244.72 Prevailing wage determination.

After the filing of the application for insurance and prior to the beginning of construction, the Commissioner shall obtain from the Secretary of Labor a determination as to the wages prevailing for the various classes of laborers and mechanics in the area where the project is to be constructed.

§ 244.75 Ineligible contracts.

(a) Contracts relating to the construction of the project shall not be made with a general contractor or a subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest), the name of which is on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under the applicable regulations of the Secretary of Labor.

(b) If the Commissioner determines that a contract has been made contrary to the requirements of paragraph (a) of this section and so notifies the mortgagee, the Commissioner may refuse to insure any subsequent advances of mortgage proceeds.

§ 244.77 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a wage certificate as required by the Commissioner. The certificate shall state that the laborers and mechanics employed in the construction of the project have been paid not less than the prevailing wages determined by the Secretary of Labor and any overtime wages at a rate not less than one and one-half times the basic rate of pay for all work time, in excess of 8 hours during any workday, or in excess of 40 hours during any workweek.

Funds and Finances

§ 244.85 Funds and finances—deposits and letters of credit.

(a) *Deposits.* Where the Commissioner requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. The deposit shall be held by the mortgagee in a special account or by the depository under an appropriate agreement approved by the Commissioner.

(b) *Letter of credit.* Where a letter of credit is acceptable to the Commissioner in lieu of deposit of cash or securities, the letter of credit shall be unconditional and irrevocable. The letter of credit shall be issued to the mortgagee by a banking institution. The mortgagee of record may not be the issuer of the letter of credit without the prior written consent of the Commissioner. The mortgagee shall be responsible to the Commissioner for collection under the letter of credit. In

the event a demand for payment under the letter of credit is not immediately met, the mortgagee shall forthwith provide a cash deposit equivalent to the undrawn balance of the letter of credit.

[36 FR 24663, Dec. 22, 1971, as amended at 48 FR 35393, Aug. 11, 1983; 49 FR 12215, Mar. 29, 1984]

§ 244.87 Funds and finances—offsite utilities and streets.

The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited by the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

§ 244.90 Funds and finances—insured advances—general requirements.

(a) *Establishment of funds.* If the commitment provides for insurance of advances during construction, the mortgagor shall, prior to initial endorsement, make each of the following deposits:

(1) An amount determined by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to the project. The deposit shall be in cash and shall be held by the mortgagee under an appropriate agreement approved by the Commissioner requiring all the cash to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any mortgage money. If all or part of the funds required under this paragraph are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of the mortgage proceeds.

(2) An amount representing all fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner.

(b) *Deposit and use of funds.* Unless other arrangements acceptable to the Commissioner are made, the funds referred to in paragraph (a) of this section shall be subject to the provisions of § 244.85(a).

(c) *Letter of credit or agreement.* The mortgagee may accept, in lieu of a cash deposit required by paragraph (a)(2) of this section, a letter of credit as provided in § 244.85(b). If the funds required under paragraph (a)(1) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept, in lieu of a cash deposit required by paragraph (a)(1) of this section, either a letter of credit as provided in § 244.85(b) or an agreement, as described in § 207.19(c)(7), which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee.

[36 FR 24663, Dec. 22, 1971, as amended at 48 FR 35393, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

§ 244.92 Funds and finances—insured advances—working capital.

(a) The amount of working capital, if any, required by the Commissioner to be deposited by the mortgagor with the mortgagee or in a depository satisfactory to the mortgagee and under its control, shall not exceed 2 percent of the original amount of the mortgage. Disbursement from such deposit shall be made only in a manner prescribed by the Commissioner.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 244.95 Funds and finances—insured advances—assurance of completion.

(a) The mortgagor shall furnish assurance of completion of the project in the form of a personal indemnity agreement, corporate surety bonds for payment and performance, or a completion assurance agreement secured by a cash deposit. All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies issuing bonds and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner. The minimum requirements for assurance of completion are as follows:

(1) Where the estimated cost of construction of rehabilitation is $500,000 or less, the assurance of completion will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as the general contractor, or by the individuals operating as the general contractor. Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, the assurance shall be as set forth in paragraph (a) (2) or (3) of this section.

(2) Where the structure contains no elevator or where the structure contains an elevator and is three stories or less, assurance shall be by corporate surety bonds for payment and performance each in the amount of 100 percent of the amount of the HUD estimate of construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(3) Where the structure contains an elevator and is four stories or more, assurance shall be by corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD estimated construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 25 percent of the amount of the HUD estimate of construction or rehabilitation cost.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements in this section.

(b) The lender may accept, in lieu of a cash deposit required by paragraph (a) of this section, a letter of credit meeting the requirements of § 244.85(b).

[41 FR 41518, Sept. 22, 1976, as amended at 48 FR 44071, Sept. 27, 1983]

Supervision of Mortgagor

§ 244.100 Supervision of mortgagor—form of regulation.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer or reinsurer of the mortgage or while the Secretary is the holder of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 244.102 Supervision of mortgagor—maintenance of project.

The mortgagor shall maintain the project's grounds and buildings and the equipment financed with mortgage proceeds in good repair. It shall promptly complete such repairs and maintenance as the Commissioner considers necessary and required.

§ 244.105 Supervision of mortgagor—books and accounts.

The books and accounts of the mortgagor relating to the operation of the physical facilities of the project (exclusive of the books and records relating to the group practice of medicine, dentistry, or optometry) shall be established and maintained in a manner

satisfactory to the Commissioner. They shall be kept in accordance with the requirements of the Commissioner so long as the mortgage is insured by the Commissioner or the mortgage is held by the Secretary. The mortgagor shall file with the Commissioner such financial reports as the Commissioner may require.

§ 244.107 Supervision of mortgagor—inspection of facilities by Commissioner.

The mortgagor's property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers relating to the operation of the physical facilities of the project (exclusive of the books and records relating to the group practice of medicine, dentistry or optometry) shall be subject to inspection and examination by the Commissioner or his duly authorized representative at all reasonable times.

§ 244.110 Supervision of mortgagor—control over surplus cash.

Surplus cash acquired by the mortgagor from the operation of the project may be used only for such specific purposes as may be approved by the Commissioner. The term "surplus cash" as used in this section shall mean the cash legally available and remaining after the payment and allocation of funds as follows:

(a) The payment of each of the following:

(1) Sums currently due under the terms of the mortgage or note insured by the Commissioner or held by the Secretary.

(2) Amounts required to be deposited in the Reserve Fund for Replacements.

(3) Outstanding obligations of the mortgagor arising out of the operation of the project other than those arising out of the mortgage indebtedness, unless funds for payment have been set aside or deferment of payment has been approved by the Commissioner.

(b) The allocation and placement in a separate account of an amount equal to the aggregate of all special funds required to be maintained by the project.

§ 244.112 Supervision of mortgagor—fund for replacements.

The mortgagor shall deposit and maintain with the mortgagee a reserve fund for replacements. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the regulatory agreement, corporate charter, or in such other document as the Commissioner may require.

§ 244.115 Rental of facilities.

Where the mortgagor rents the group practice facilities to a medical or dental group, the terms of the lease and the amount of the rental charge shall be subject to the approval of the Commissioner. Provision shall be included in the lease for an annual review of the rental charge and for adjustments to increase or decrease such rental charge with the approval of the Commissioner. The mortgagor shall make an annual report to the Commissioner as to its financial status and adjustments in the annual rental shall be made only with the approval of the Commissioner.

Property Requirements

§ 244.120 Eligibility of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 244.1. The mortgage shall cover real estate in which the mortgagor has one of the following interests:

(a) A fee simple title.

(b) A lease for not less than 99 years which is renewable.

(c) A lease having a term of not less than 75 years to run from the date the mortgage is executed.

(d) A lease executed by a governmental agency or an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

[36 FR 24663, Dec. 22, 1971, as amended at 50 FR 4647, Feb. 1, 1985]

§ 244.122 Special property requirements.

The project shall be designed for use as a group practice facility which the Commissioner finds:

(a) Will be constructed in an economical manner.

(b) Will not be of elaborate or extravagant design or materials.

(c) Will provide adequate and suitable facilities for the group practice of medicine, optometry, or dentistry.

§ 244.125 Zoning, deed or building restrictions.

The project when completed shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations and requirements.

§ 244.127 Discrimination prohibited.

Any contract or subcontract executed for the construction or rehabilitation of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the same provision against discrimination.

Cost Certification

§ 244.140 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of limiting the outstanding principal balance of the mortgage, at the time of final endorsement, to the statutory limitations based on the actual cost of the project. The agreement shall require the mortgagor to do each of the following:

(1) Disclose its relationship including any collateral agreements with the general contractor, the subcontractor, and the suppliers.

(2) Enter into a construction contract with the general contractor in a form meeting the requirements of § 244.145.

(3) Execute a certificate of actual costs upon completion of the construction.

(4) Reduce the outstanding principal balance of the mortgage by applying thereto any excess of mortgage proceeds over statutory limitations based on actual costs.

§ 244.142 Certificate as to subcontracts.

If the Commissioner determines that the mortgagor or any of its officers, directors, stockholders, partners, or beneficiaries have an interest (financial or otherwise) in a subcontractor or material supplier, the mortgagor shall certify (at such times and in such form as may be prescribed by the Commissioner prior to final endorsement of the mortgage for insurance) that the amounts paid to such subcontractor or material supplier were not more than the rate being paid in the locality for similar type labor and materials.

§ 244.145 Form of contract.

A cost-plus form of contract between the mortgagor and the general contractor shall be used unless it is established to the Commissioner's satisfaction that such form is not required to protect his interests and the interests of the mortgagor, in which case a lump sum contract may be used.

§ 244.147 Certificate of actual costs.

Upon completion of the project to the satisfaction of the Commissioner and prior to final endorsement, the mortgagor shall submit a certificate showing the actual costs of the project to the mortgagor. The certificate shall be in a form prescribed by the Commissioner.

§ 244.150 Certificate of actual costs—general contractor's costs.

Upon completion of the project to the satisfaction of the Commissioner and prior to final endorsement, the general contractor shall submit a certificate of actual costs in a form prescribed by the Commissioner.

§ 244.152 Certificate of actual costs—subcontractor's costs.

Where the subcontractor, material supplier, or equivalent lessor have an

identity of interest either with the mortgagor or the general contractor, the Commissioner may require the mortgagor to submit a certificate showing the actual cost of the labor, supplies, or equipment furnished to the project by any one or all of such entities. The certificate shall be in a form prescribed by the Commissioner.

§ 244.155 Records.

The mortgagor shall keep and maintain adequate records of all construction costs, or other cost items not representing work under the general contract and shall require the general contractor to keep similar records. Upon request by the Commissioner, such records, together with any collateral agreements, shall be made available for examination.

§ 244.157 Adjustment of cost—new construction.

In the case of new construction, in order to give effect to land value, the aggregate amount shown in the certificate of actual costs shall be adjusted, prior to final endorsement, as follows:

(a) *Land held in fee.* Where the land included in the mortgage security is owned in fee by the mortgagor, the Commissioner's estimate of the fair market value of such land prior to the beginning of construction shall be added to the total cost shown in the certificate.

(b) *Land held under leasehold.* Where the land included in the mortgage security is held by the mortgagor under a leasehold, the expense of acquiring the leasehold may be added to the aggregate amount shown in the certificate of actual costs. The amount added shall be limited to the Commissioner's estimate, prior to the beginning of construction, of the fair market value of the leasehold or other interest.

§ 244.160 Adjustment of cost—rehabilitation.

In the case of repair or rehabilitation, in order to give effect to land value, the aggregate amount shown in the certificate of actual costs shall be adjusted, prior to final endorsement, as follows:

(a) *Property already owned.* Where no part of the proceeds of the mortgage is to be used to finance the purchase of the land or the existing improvements, the mortgage shall be reduced to an amount which does not exceed 100 percent of the actual costs (as approved by the Commissioner) of the repair or rehabilitation.

(b) *Property subject to existing mortgage.* Where the proceeds of the mortgage are to be used to refinance an existing mortgage, there shall be added to the actual costs of the repair or rehabilitation the lesser of the following:

(1) The amount of the existing mortgage.

(2) 90 percent of the Commissioner's estimate (prior to repair or rehabilitation) of the fair market value of the land and existing improvements.

(c) *Property to be acquired.* Where the proceeds are to be used to finance the purchase of the land and existing improvements in addition to financing the repair or rehabilitation, there shall be added to the actual costs of the repair or rehabilitation the lesser of the following:

(1) The purchase price of the land and existing improvements.

(2) The Commissioner's estimate (prior to repair or rehabilitation) of the fair market value of the land and existing improvements.

§ 244.162 Reduction in mortgage amount.

If the principal amount of the mortgage exceeds the total shown by the certificate of actual costs, after adjustment as provided in §§ 244.157 and 244.160, the mortgage shall be reduced by the amount of such excess prior to final insurance endorsement.

§ 244.165 Effect of agreement.

Any agreement, undertaking, statement, or certification required by the Commissioner in connection with the certificate of actual costs shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner and that it may be relied upon as a true statement of the facts contained therein.

§ 244.167 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification of actual costs, such certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor.

§ 244.168 Waiver of eligibility requirements for mortgage insurance.

The Secretary may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under any section or title of the Act.

[39 FR 2757, Jan. 24, 1974]

TITLE

§ 244.180 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 244.182 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commission as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A torrens or similar title certificate.

FACILITIES FOR OLDER DECLINING AREAS

§ 244.185 Eligibility of mortgages covering facilities in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation or construction of a group practice facility located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages) as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for an adequate group practice facility to serve low and moderate income families.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 244.249 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart B—Contract Rights and Obligations

§ 244.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of Part 207, Subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act apply to a mortgage covering a group practice facility insured under Title XI of the National Housing Act.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to title XI of the Act.

(c) All of the definitions in § 244.1 shall apply to this subpart. In addition as used in this part, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

[36 FR 24663, Dec. 22, 1971, as amended at 50 FR 38787, Sept. 25, 1985]

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

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AUTHORITY: Sec. 202, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1b); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 245.5 Purpose.

The purpose of this part is to recognize the importance and benefits of cooperation and participation of tenants in creating a suitable living environment in multifamily housing projects and in contributing to the successful operation of such projects, including their good physical condition, proper maintenance, security, energy efficiency, and control of operating costs.

[50 FR 32402, Aug. 12, 1985]

§ 245.10 Applicability of part.

(a) Except as provided in paragraph (d) of this section, the requirements of Subparts B through H of this part apply to mortgagors of multifamily housing projects which:

(1) Have mortgages that have received final endorsement on behalf of the Secretary and are insured under the National Housing Act, or held by the Secretary, and that are assisted under section 236 or the proviso of section 221(d)(5) of the National Housing Act, or under section 101 of the Housing and Urban Development Act of 1965;

(2) Have direct mortage loans from HUD at below-market interest rates under section 202 of the Housing Act of 1959 that are assisted under section 101 of the Housing and Urban Development Act of 1965 or that are assisted under Part 886, Subpat A of this title, following conversion to such assistance from under section 101 of the Housing and Urban Development Act of 1965;

(3) Have mortgages that have received final endorsement on behalf of the Secretary and are assisted under Part 886, Subpart A of this title, following conversion to such assistance from assistance under section 101 of the Housing and Urban Development Act of 1965; or

(4) Were assisted under the above programs before acquisition by the Secretary and sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low- and moderate-income character of the project.

(b) Except as provided in paragraph (d) of this section, the requirements of Subparts B and C of this part apply, in addition to the mortgagors described in paragraph (a) of this section, to mortgagors of multifamily housing projects which receive assistance under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965 administered through a State or local housing finance agency, but which do not have mortgages insured under the National Housing Act or held by the Secretary.

(c) Except as provided in paragraph (d) of this section, the requirements of Subparts D and E of this part apply, in addition to the mortgagors described in paragraph (a) of this section, to mortgagors of multifamily housing projects which:

(1) Receive assistance under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965 administered through a State or local housing finance agency, but which do not have mortgages insured under the National Housing Act or held by the Secretary; or

(2) Have direct mortgage loans from HUD at below-market interest rates under section 202 of the Housing Act of 1959.

(d)(1) The requirements of Subpart B and of Subparts D through H do not apply to any mortgagor which is a cooperative housing corporation or association.

(2) The requirements of Subpart D do not apply with respect to any tenant of a multifamily project who is receiving housing assistance payments

under section 8 of the United States Housing Act of 1937, pursuant to Part 882, Subparts A and B of this title.

[50 FR 32402, Aug. 12, 1985]

§ 245.15 Notice to tenants.

(a) Whenever a mortgagor is required under Subparts D through H of this part to serve notice on the tenants of a project, the notice must be served by delivery, except, for a high-rise project, the notice may be served either by delivery or by posting. If service is made by delivery, a copy of the notice must be delivered directly to each unit in the project or mailed to each tenant. If service is made by posting, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located and, during any prescribed tenant period, in a conspicuous place at the address stated in the notice where the materials in support of the mortgagor's proposed action are to be made available for inspection and copying. Posted notices must be maintained intact and in legible form during any prescribed notice period.

(b) For purposes of computing time periods following service of notice, service is effected, in the case of service by delivery, when all notices have been delivered or mailed and, in the case of service by posting, when all notices have been initially posted.

[50 FR 32402, Aug. 12, 1985]

Subpart B—Tenant Organizations

§ 245.105 Organizations and efforts to organize.

Mortgagors subject to the requirements of this subpart shall not impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize.

[48 FR 28437, June 22, 1983. Redesignated at 50 FR 32403, Aug. 12, 1985]

§ 245.110 Meeting space.

Mortgagors subject to the requirements of this subpart shall not unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the mortgaged property when requested by:

(i) A resident tenant organization in connection with the represenational purposes of such organization; or

(ii) Tenants seeking to organize or to consider collectively any matter pertaining to the operation of the project. The mortgagor may charge for such use such fees or charges approved by the Secretary as may normally be imposed for the use of such facilities or may waive such charges.

[48 FR 28437, June 22, 1983. Redesignated at 50 FR 32403, Aug. 12, 1985]

Subpart C—Efforts To Obtain Assistance

§ 245.205 Efforts to obtain assistance.

(a) Mortgagors subject to the requirements of this subpart shall not interfere with the efforts of tenants to obtain rent subsidies or other public assistance.

(b) A mortgagor subject to the requirements of this subpart who is a party to a rent supplement contract under Part 215 of this chapter, a rental assistance payments contract under Part 236, Subpart D, of this chapter, or a Housing Assistance Payments Contract under 24 CFR Part 886 shall not refuse to make assistance under such contract available to an existing tenant who is eligible therefor, provided that sufficient contract and budget authority and contract units are available under the contract. However, this provision shall not be deemed to require the mortgagor to give priority in the allocation of any such available assistance to an existing tenant instead of an eligible applicant on the mortgagor's waiting list or otherwise to supersede tenant selection procedures which are not otherwise inconsistent with applicable program regulation or instructions.

(c) Subject to the provisions of any contract made in connection with the purchase of a multifamily housing project owned by the Secretary, this section shall not be deemed to require a mortgagor subject to the requirement of this Subpart to enter into a Housing Assistance Payments Con-

tract pursuant to 24 CFR Part 882 for the benefit of an existing tenant who obtains a Certificate of Family Participation.

[48 FR 28437, June 22, 1983. Redesignated at 50 FR 32403, Aug. 12, 1985]

§ 245.210 Availability of information.

A mortgagor subject to the requirements of this subpart shall make available to tenants any information concerning rent subsidies or other public assistance that is prepared and distributed by HUD to the project for the purpose of distribution to tenants.

[48 FR 28437, June 22, 1983. Redesignated at 50 FR 32403, Aug. 12, 1985]

Subpart D—Procedures for Requesting Approval of an Increase in Maximum Permissible Rents

SOURCE: 50 FR 32403, Aug. 12, 1985, unless otherwise noted.

§ 245.305 Applicability of subpart.

(a) The requirements of this subpart apply to any request by a mortgagor, as provided by § 245.10,* for HUD approval of an increase in maximum permissible rents.

(b) For purposes of this subpart, an increase in utility charges paid directly by the tenant does not constitute an increase in rents.

§ 245.310 Notice to tenants.

(a) At least 30 days before submitting a request to HUD for approval of an increase in maximum permissible rents, the mortgagor must notify the tenants of the proposed rent increase. Copies of the notice must be served on the tenants as provided in § 245.15. The notice must contain the following information in the following format or an equivalent format:

NOTICE TO TENANTS OF INTENTION TO SUBMIT A REQUEST TO HUD FOR APPROVAL OF AN INCREASE IN MAXIMUM PERMISSIBLE RENTS

Date of Notice

Take notice that on [date] we plan to submit a request for approval of an increase in the maximum permissible rents for [name of apartment complex] to the United States Department of Housing and Urban Development (HUD). The proposed increase is needed for the following reasons:

1.
2.
3.

The rent increases for which we have requested approval are:

Bedrooms	Present rent [1]		Proposed increase [1]		Proposed rent [1]	
	Basic	Market	Basic	Market	Basic	Market
5						
0	$	$	$	$		$
1						
2						
3						
4						

[1] Separate columns for basic and market rent should be used only for projects assisted under sec. 236 of the National Housing Act. In addition, in projects with more than 1 type of apartment having the same number of bedroom but different rents, each type should be listed separately.

A copy of the materials that we are submitting to HUD in support of our request will be available during normal business hours at [address] for a period of 30 days from the date of service of this notice for inspection and copying by tenants of [name of apartment complex] and, if the tenants wish, by legal or other representatives acting for them individually or as a group.

During a period of 30 days from the date of service of this notice, tenants of [name of apartment complex] may submit written comments on the proposed rent increase to us at [address]. Tenant representatives may assist tenants in preparing those comments.

*EDITORIAL NOTE: Section 245.10 was redesignated as § 245.105 at 50 FR 32403, Aug. 12, 1985.

(If, at HUD's request or otherwise, we make any material change during the comment period in the materials available for inspection and copying, we will notify the tenants of the change or changes, and the tenants will have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed rent increase). These comments will be transmitted to HUD, along with our evaluation of them and our request for the increase. You may also send a copy of your comments directly to HUD at the following address: United States Department of Housing and Urban Development [address of local HUD field office with jurisdiction over rent increases for the project], Attention: Director, Housing Management Division, Re: Project No. [Name of Apartment Complex].

HUD will approve, adjust upward or downward, or disapprove the proposed rent increase upon reviewing the request and comments. When HUD advises us in writing of its decision on our request, you will be notified. If the request is approved, any allowable increase will be put into effect only after a period of at least 30 days from the date you are served with that notice and in accordance with the terms of existing leases.

[Name of mortgagor or managing agent]

(b) The mortgagor must comply with all representations made in the notice. The materials to be made available to tenants for inspection and copying are those specified in § 245.315.

§ 245.315 Materials to be submitted to HUD.

When the notice referred to in § 245.310 is served on the tenants, the mortgagor must send to the local HUD office copies of the following documents described in either paragraph (a) or (b) of this section, as specified by the local HUD office:

(a) Documents to be submitted under profit and loss approach:

(1) A copy of the notice to tenants;

(2) An annual Statement of Profit and Loss, Form HUD-92410, covering the project's most recently ended accounting year (this statement must have been audited by an independent public accountant if the project is required by HUD to prepare audited financial statements), and Form HUD-92410 for the intervening period since the date of the last annual statement if more than four months have elapsed since that date;

(3) A narrative statement of the reasons for the requested increase in maximum permissible rents; and

(4) An estimate of the reasonably anticipated increases in project operating costs that will occur within twelve months of the date of submission of materials under this section.

(5) A status report on the project's implementation of its current Energy Conservation Plan.

(b) Documents to be submitted under the forward-budget approach:

(1) A cover letter summarizing the reasons a rent increase is needed;

(2) A copy of the notice to tenants;

(3) A rent increase worksheet providing an income and expense budget for the 12 months following the anticipated effective date of the proposed rent increase;

(4) A brief statement explaining the basis for the expense lines on the rent increase worksheet;

(5) A partially completed Rent Schedule, Form HUD-92458;

(6) If the tenants receive utility allowances, the mortgagor's recommended utility allowance for each unit type and brief statement explaining the basis for the recommended increase; and

(7) A status report on the project's implementation of its current Energy Conservation Plan.

(The information collection requirements in paragraph (a) of this section were approved by the Office of Management and Budget under control number 2502-0310 and the information collection requirements in paragraph (b) were approved under control number 2502-0324)

§ 245.320 Request for increase.

Upon expiration of the period for tenant comments required in the notice format in § 245.310 and after review of the comments submitted to the mortgagor, the mortgagor must submit to the local HUD office, in addition to the materials enumerated in § 245.315 and any revisions thereto, the request for an increase in the maximum permissible rents, together with the following:

(a) Copies of all written comments submitted by the tenants to the mortgagor;

(b) The mortgagor's evaluation of the tenants' comments with respect to the request;

(c) A certification by the mortgagor that:

(1) It has complied with all of the requirements of this subpart;

(2) The copies of the materials submitted in support of the proposed increase were located in a place reasonably convenient to tenants in the project during normal business hours and that requests by tenants to inspect the materials, as provided for in the notice, were honored;

(3) All comments received from tenants were considered by the mortgagor in making its evaluation; and

(4) Under the penalties and provisions of Title 18, United States Code, section 1001, the statements contained in this request and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete.

§ 245.325 Notification of action on request for increase.

(a) When processing a request for an increase in maximum permissible rents, HUD shall take into consideration reasonably anticipated increases in project operating costs that will occur (1) within 12 months of the date of submission of materials to HUD under § 245.315(a) (profit and loss approach) or (2) within 12 months of the anticipated effective date of the proposed rent increase for submissions under § 245.315(b) (forward-budget approach).

(b) After HUD has considered the request for an increase in rents, has found that it meets the requirements of § 245.320, and has made its determination to approve, adjust upward or downward, or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval, adjustment upward or downward, or disapproval. The mortgagor must make the reasons for approval, adjustment, or disapproval known to the tenants, by service of notice on them as provided in § 245.15.

§ 245.330 Non-insured projects.

(a) In the case of a proposed rent increase for a project assisted under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965, but which does not have a mortgage insured by HUD or held by the Secretary, the provisions of this section and of §§ 245.305 through 245.320 shall apply to the mortgagor (project owner), except that—

(1) The notice format prescribed in § 245.310 must be modified to reflect the procedural changes made by this section;

(2) The material (including tenant comments) required to be submitted to HUD under §§ 245.315 and 245.320 must be submitted to the State or local agency administering the section 236 assistance or rent supplement assistance contracts, rather than to HUD. An equivalent State or local agency form or standard accounting form may be substituted for the Statement of Profit and Loss, Form HUD-92410 required under § 245.315(a)(2), if approved by the local HUD office; and

(3) The State or local agency must certify that the mortgagor has complied with the requirements of §§ 245.310, 245.315, 245.320, and 245.325.

(b) After the State or local agency has considered the request for an increase in maximum permissible rents that meets the requirements of § 245.320 (including consideration of anticipated cost increases, as provided in § 245.325(a)), it must make a determination to approve, adjust upward or downward, or disapprove the request. If the agency determines to approve or adjust the request, it must submit to the appropriate local HUD office the mortgagor's requests for approval of an increase in maximum permissible rents, along with the comments of the tenants and the mortgagor's evaluation of the comments, and must certify to HUD that the mortgagor is in compliance with the requirements of this subpart. HUD shall review the agency's determination and certification and, within 30 days, of their submission to HUD, notify the agency of its approval, adjustment upward or

downward, or disapproval of the proposed rent increase. HUD will not unreasonably withhold approval of a rent increase approved by the State or local agency.

(c) If the agency determines to disapprove the request, there is no HUD review of the agency's determination.

(d) The agency must notify the mortgagor of the final disposition of the request, and it must furnish the mortgagor with a written statement of the reasons for its approval, adjustment, or disapproval. The mortgagor must make the reasons for approval, adjustment or disapproval known to the tenants, by service of notice on them as provided in § 245.15.

Subpart E—Procedures for Requesting Approval of a Conversion From Project-Paid Utilities to Tenant-Paid Utilities or of a Reduction in Tenant Utility Allowances

SOURCE: 50 FR 32404, Aug. 12, 1985, unless otherwise noted.

§ 245.405 Applicability of subpart.

The requirements of this subpart apply to any request by a mortgagor covered by § 245.10* for HUD approval of the conversion of a project from project-paid utilities to tenant-paid utilities, or of a reduction in tenant utility allowances.

§ 245.410 Notice to tenants.

At least 30 days before submitting a request to HUD for approval of a conversion from project-paid utilities to tenant-paid utilities, or of a reduction in tenant utility allowances, the mortgagor must serve notice of the proposed conversion or reduction on the project tenants, as provided in § 245.15. The notice shall state the following:

(a) That the mortgagor intends to submit a request to HUD for approval of conversion from project-paid utilities to tenant-paid utilities, or of a reduction of tenant utility allowances;

(b) That the tenants have the right to participate as provided in § 245.420, and what those rights are, including the address at which the material required to be made available for inspection and copying under that section are to be kept;

(c) That tenant comments on the proposed conversion of reduction may be sent to the mortgagor at a specified address or directly to the local HUD office, and that comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD's approval of the conversion or reduction is submitted;

(d) That HUD will approve or disapprove the proposed conversion, or approve, adjust upward or downward, or disapprove the proposed reduction, based upon its review of the information submitted and all tenant comments received; and

(e) That the mortgagor will notify the tenants of HUD's decision and that it will not begin to effect any approved conversion or reduction (in accordance with the terms of existing leases) until at least 30 days from the date of service of the notification.

§ 245.415 Initial submission of materials to HUD.

(a) When the notice required under § 245.410 is served on the tenants, the mortgagor must submit the following materials to the local HUD office:

(1) A copy of the notice to tenants;

(2) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities—

(i) A statement indicating:

(A) The type of utility or utilities involved;

(B) The number of units in the project by type and size;

(C) The average utility consumption data by unit type and size for comparable projects, and utility rate information, as obtained from the utility supplier;

(D) The estimated monthly cost of the utilities to be paid by the tenants by unit type and size, based upon the consumption data and rate information described in paragraph (a)(2)(i)(C);

*EDITORIAL NOTE: Section 245.10 was redesignated as § 245.105 at 50 FR 32403, Aug. 12, 1985.

(E) The monthly cost for the past year of paying for the utility or utilities involved on a project basis (actual cost) and by unit type and size (estimated breakdown);

(F) An estimate of the cost of conversion, as obtained from the utility supplier or from bids from contractors;

(G) The source and terms of financing for the conversion (to the extent known); and

(H) The estimated effect of the conversion on the total housing costs of the tenants by unit type and size, taking into account the estimated cost of conversion (including the cost of its financing), the estimated monthly cost of utilities to be paid by the tenants by unit type and size, the proposed utility allowances, and the estimated change in the rents paid to the mortgagor resulting from the conversion; and

(ii) A copy of the portion of the project's Energy Conservation Plan which addresses the cost-effectiveness determination associated with converting the project to tenant-paid utilities; and

(3) In the case of a proposed reduction in tenant utility allowances, a statement indicating the information described in paragraphs (a)(2)(i) (A), (B), (C) and (D) of this section, the utility allowances proposed for reduction, and a justification of the proposed reduction.

(b) If additional notice under § 245.420(c) is required, the mortgagor must submit to HUD the changes to the materials required under this section when the notice required under § 245.420(c) is served on the tenants.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.420 Rights of tenants to participate.

(a) The tenants (including any legal or other representatives acting for tenants individually or as a group) must have the right to inspect and copy the materials that the mortgagor is required to submit to HUD pursuant to § 245.415(a), for a period of 30 days from the date on which the notice required under § 245.410 is served on the tenants. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed conversion to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant comment period in the materials submitted to HUD pursuant to § 245.415, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed conversion or reduction, before the mortgagor may submit its request to HUD for approval of the conversion or reduction.

§ 245.425 Submission of request for approval to HUD.

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

(a) The mortgagor's written request for HUD approval of a conversion from project-paid utilities to tenant-paid utilities, or of a reduction in tenant utility allowances;

(b) Copies of all written tenant comments;

(c) The mortgagor's evaluation of the tenant comments on the proposed conversion or reduction;

(d) A certification by the mortgagor that it has complied with all of the requirements of §§ 245.410, 245.415 and 245.420, and this section; and

(e) Such additional materials as HUD may have specified in writing.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.430 Decision on request for approval.

(a) After consideration of the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor in writing of its approval or disapproval of the proposed conversion or of its approval, adjustment upward or downward, or disapproval of the proposed reduction, providing its reasons for such determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed conversion or a reduction (as originally proposed or as adjusted), the notice must state:

(1) The amount of the rent to be paid to the mortgagor and the utility allowance for each unit; and

(2) The effective date of the conversion or reduction (which must be at least 30 days from the date of service of the notice and in accordance with the terms of existing leases).

§ 245.435 Non-insured projects.

(a) In the case of a proposed conversion or reduction involving a project that is assisted under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965 but that does not have a mortgage insured by HUD or held by the Secretary, the provisions of this section and of §§ 245.405 through 245.425 apply to the mortgagor (project owner), except that—

(1) The notice to tenants required under § 245.410 must be modified to reflect the procedural changes made by this section;

(2) The materials (including tenant comments) required to be submitted to HUD under §§ 245.415 and 245.425 must be submitted to the State or local agency administering the section 236 assistance or rent supplement assistance contracts, rather than to HUD; and

(3) The State or local agency must certify that the mortgagor has complied with the requirements of §§ 245.410, 245.415, 245.420, and 245.425.

(b) After the State or local agency has considered the request for approval of a conversion or reduction that meets the requirements of § 245.425, it must make a determination to approve or disapprove the conversion, or to approve, adjust upward or downward, or disapprove the reduction. If the agency determines to approve the conversion or reduction (as originally proposed or as adjusted), it must submit to the appropriate local HUD office the mortgagor's request for approval of the conversion or reduction, along with the comments of the tenants and the mortgagor's evaluation of the comments, and must certify to HUD that the mortgagor is in compliance with the requirements of this subpart. HUD must review the agency's determination and certification and notify the agency of its approval or disapproval of the proposed conversion or of its approval, adjustment upward or downward, or disapproval of the proposed reduction. HUD will not unreasonably withhold approval of a conversion or reduction approved by the State or local agency.

(c) If the agency determines to disapprove the conversion or reduction, there is no HUD review of the agency's determination.

(d) The agency must notify the mortgagor of the final disposition of the request, and it must furnish the mortgagor with a written statement of the reasons for its approval or disapproval. The mortgagor must make the reasons for approval or disapproval known to the tenants, by service of notice on them as provided in § 254.15. If the agency has approved the proposed conversion or a reduction, the notice must set forth the information prescribed in § 245.430(b)(1) and (2).

Subpart F—Procedures for Requesting Approval of a Conversion of Residential Units to a Non-Residential Use, or to Cooperative Housing or Condominiums

SOURCE: 50 FR 32406, Aug. 12, 1985, unless otherwise noted.

§ 245.505 Applicability of subpart.

The requirements of this subpart apply to any request by a mortgagor covered by § 245.10* for HUD approval of the conversion of residential units in a multifamily housing project to a nonresidential rental use, or the transfer of the project to a cooperative housing mortgagor corporation or association.

§ 245.510 Notice to tenants.

At least 30 days before submitting a request to HUD for approval of conversion of residential space in a project to nonresidential use, cooperative housing or condominiums, the mortgagor must serve notice of the proposed conversion on the project tenants, as provided in § 245.15. Conversion of a project to a cooperative of a portion to non-residential use does not constitute a change of use requiring mortgagee approval. The notice must state the following:

(a) That the mortgagor intends to submit a request to HUD for approval of a conversion of residential units in the project to non-residential use, cooperative housing or condominiums (as described in the notice);

(b) That the tenats have the right to participate as provided in § 245.520, and what those rights are, including the address at which the materials required to be made available for inspection and copying under the section are to be kept;

(c) That tenant comments on the proposed conversion may be sent to the mortgagor at a specified address or directly to the local HUD office, and that comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD approval of the conversion is submitted.

(d) That HUD will approve or disapprove the proposed conversion based upon its review of the information submitted and all tenant comments received;

(e) That the proposed conversion may require the owner to request HUD approval of a rent increase; and

(f) That the mortgagor will notify the tenants of HUD's decision and that it will not begin to effect any approved conversion (in accordance with the terms of existing leases) until at least 30 days from date of service of the notification.

§ 245.515 Initial submission of materials to HUD.

(a) When the notice required under § 245.510 is served on the tenants, the mortgagor must submit the following materials to the local HUD office:

(1) In the case of a proposed conversion of residential rental units to nonresidential use:

(i) A statement describing the proposed conversion;

(ii) A statement describing the estimated effect of the proposed conversion on the value of the project, the project rent schedule, the number of dwelling units in the project, a list of the units to be converted and their occupancy, the amount of subsidy available to the project, and the project income and expenses (including property taxes);

(iii) A statement assessing the compatibility of the proposed non-residential use with the residential character of the project;

(iv) Written approval of the mortgagee if required;

(v) An undertaking by the mortgagor to pay all relocation costs that may be required by HUD for tenants required to vacate the project because of the conversion; and

(vi) A copy of the notice to tenants.

(2) In the case of a proposed transfer of the project to a cooperative housing mortgagor corporation or association (conversion of residential rental units to residential cooperative housing), the materials specified in paragraphs (a)(1) (i), (iv) and (vi) of this section and the following additional materials:

(i) An estimate of the demand for cooperative housing, including an estimate of the number of present tenants interested in purchasing cooperative housing;

(ii) Estimates of downpayments and monthly carrying charges that will be required; and

*EDITORIAL NOTE: Section 245.10 was redesignated as § 245.105 at 50 FR 32403, Aug. 12, 1985.

(iii) Copies of proposed organizational documents, including By-Laws, Articles of Incorporation, Subscription Agreement, Occupancy Agreement, and Sale Document.

(3) In the case of a proposed conversion of residential rental units to condominium units, the materials specified in paragraphs (a)(1) (i), (iv) and (vi) of this section and the following additional materials:

(i) An estimate of the demand for condominium housing, including an estimate of the number of present tenants interested in purchasing units;

(ii) Estimates of downpayments, monthly mortgage payments and condominium association fees that will be required; and

(iii) A list of the units to be converted and their occupancy.

(b) If additional notice under § 245.520(c) is required, the mortgagor must submit to HUD the changes to the materials required under this section when the notice required under § 245.520(c) is served on the tenants.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.520 Rights of tenants to participate.

(a) The tenants (including any legal or other representatives acting for tenants individually or as a group) have the right to inspect and copy the materials that the mortgagor is required to submit to HUD pursuant to § 245.515(a), for a period of 30 days from the date on which the notice required under § 245.510 is served on the tenants. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed conversion to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant comment period in the materials submitted to HUD pursuant to § 245.515, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed conversion, before the mortgagor may submit its request to HUD for approval of the conversion.

§ 245.525 Submission of request for approval to HUD.

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

(a) The mortgagor's written request for HUD approval of a conversion of residential space in the project to nonresidential use, cooperative housing or condominiums;

(b) Copies of all written tenant comments;

(c) The mortgagor's evaluation of the tenant comments on the proposed conversion;

(d) A certification by the mortgagor that it has complied with all of the requirements of §§ 245.510, 245.515 and 245.520 and this section; and

(e) Such additional materials as HUD may have specified in writing.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.530 Decision on request for approval.

(a) After consideration of the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor and the mortgagee in writing of its approval or disapproval of the proposed conversion, providing its reasons for such determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed conversion, the notice must state:

(1) Which residential rental units are to be converted and whether the conversion is to non-residential use or to cooperative or condominium units; and

(2) The effective date of the conversion (which must be at least 30 days from the date of service of the notice and in accordance with the terms of existing leases).

[50 FR 32406, Aug. 12, 1985; 51 FR 10196, Mar. 25, 1986]

Subpart G—Procedures for Requesting Approval of a Partial Release of Mortgage Security

SOURCE: 50 FR 32407, Aug. 12, 1985, unless otherwise noted.

§ 245.605 Applicability of subpart.

(a) The requirements of this subpart apply to any request by a mortgagor covered by § 245.10* for HUD approval of a partial release of mortgage security. Examples of transactions that involve a partial release of mortgage security are: (1) The sale of portions of project property that provide amenities, such as parking space and recreational areas, and (2) the sale of one building in a project having more than one building.

(b) The requirements of this subpart do not apply to any release of property from a mortgage lien with respect to a utility easement or a public taking of such property by condemnation or eminent domain.

§ 245.610 Notice to tenants.

At least 30 days before submitting a request to HUD for approval of a partial release of mortgage security, the mortgagor must serve notice of the proposed conversion on the project tenants, as provided in § 245.15. The notice must state the following:

(a) That the mortgagor intends to submit a request to HUD for approval of a partial release of mortgage security (as described in the notice);

(b) That the tenants have the right to participate as provided in § 245.620, and what those rights are, including the address at which the materials required to be made available for inspection and copying under that section are to be kept;

(c) That tenant comments on the proposed partial release may be sent to the mortgagor at a specified address or directly to the local HUD office, and that comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD approval of the partial release is submitted.

(d) That HUD will approve or disapprove the proposed partial release based upon its review of the information submitted and all tenant comments received;

(e) That the proposed partial release may require the owner to request HUD approval of a rent increase; and

(f) That the mortgagor will notify the tenants of HUD's decision and that it will not effect any approved partial release transaction (in accordance with the terms of existing leases) until at least 30 days from the date of service of the notification.

§ 245.615 Initial submission of materials to HUD.

(a) When the notice required under § 245.610 is served on the tenants, the mortgagor must submit the following materials to the local HUD office:

(1) A statement describing the portion of the property that is proposed to be released and the transaction requiring the release;

(2) A statemsnt describing the estimated effect of the proposed release on the value of the project, the number of dwelling units in the project, the project income and expenses (including property taxes), the amount of subsidy available to the project, and the project rent schedule;

(3) A statement describing the proposed use of the property to be released and the persons who will have

*EDITORIAL NOTE: Section 245.10 was redesignated as § 245.105 at 50 FR 32403, Aug. 12, 1985.

responsibility for the operation and maintenance of that property, and assessing the compatibility of that use with the residential character of the project;

(4) A statement describing the proposed use of any proceeds to be received by the mortgagor as a result of the release; and

(5) A copy of the notice to tenants.

(b) If additional notice under § 245.620(c) is required, the mortgagor must submit to HUD the changes to the materials required under this section when the notice required under § 245.620(c) is served on the tenants.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.620 Rights of tenants to participate.

(a) The tenants (including any legal or other representatives acting for the tenants individually or as a group) have the right to inspect and copy the materials that the mortgagor is required to submit to HUD pursuant to § 245.615(a), for a period of 30 days from the date on which the notice required under § 245.610 is served on the tenants. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed partial release transaction to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant comment period in the materials submitted to HUD pursuant to § 245.615, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed partial release transaction, before the mortgagor may submit its request to HUD for approval of the partial release.

§ 245.625 Submission of request for approval to HUD.

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

(a) The mortgagor's written request for HUD approval of a partial release of mortgage security;

(b) Copies of all written tenant comments;

(c) The mortgagor's evaluation of the tenant comments on the proposed partial release;

(d) A certification by the mortgagor that it has complied with all of the requirements of §§ 245.610, 245.615 and 245.620 and this section; and

(e) Such additional materials as HUD may have specified in writing.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.630 Decision on request for approval.

(a) After consideration of the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor and the mortgagee in writing of its approval or disapproval of the proposed partial release of mortgage security, providing its reasons for such determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed partial release transaction, the notice must state the date on which the mortgagor intends to effect the partial release transaction (which must be at least 30 days from the date of service of the notice and in accordance with the terms of existing leases).

Subpart H—Procedures for Requesting Approval for Major Capital Additions

SOURCE: 50 32408, Aug. 12, 1985, unless otherwise noted.

§ 245.705 Applicability of subpart.

(a) The requirements of this subpart apply to any request by a mortgagor covered by § 245.10* for HUD approval to make major capital additions to the project.

(b) For the purposes of this subpart, the term "major capital additions" includes only those capital improvements which represent a substantial addition to the project, such as a new recreational facility, swimming pool or parking garage, or result in a change in the total number of bedrooms in the project. Upgrading or replacing existing capital components of the project (such as the roof or the heating or electrical system) would not constitute a major capital addition to the project.

§ 245.710 Notice to tenants.

At least 30 days before submitting a request to HUD for approval to make major capital additions to the project, the mortgagor must serve notice of the proposed additions on the project tenants, as provided in § 245.15. The notice must state the following:

(a) That the mortgagor intends to submit a request to HUD for approval to make major capital additions to the project;

(b) That the tenants have the right to participate as provided in § 245.720, and what those rights are, including the address at which the materials required to be made available for inspection and copying under that section are to be kept;

(c) That tenant comments on the proposed additions may be sent to the mortgagor at a specific address or directly to the local HUD office, and that comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD approval of the additions is submitted.

(d) That HUD will approve or disapprove the proposed additions based upon its review of the information submitted and all tenant comments received;

(e) That the proposed additions may require the owner to request HUD approval of a rent increase; and

(f) That the mortgagor will notify the tenants of HUD's decision and that it will not begin to make any approved additions to the project (in accordance with the terms of existing leases) until a period of at least 30 days from the date of service of the notification has expired.

§ 245.715 Initial submission of materials to HUD.

(a) When the notice required under § 245.710 is served on the tenants, the mortgagor must submit the following materials to the local HUD office:

(1) The general plans and sketches of the proposed capital additions;

(2) A statement describing the estimated effect of the proposed capital additions on the value of the project, the project income and expenses (including property taxes), and the project rent schedule;

(3) A statement describing how the proposed capital additions will be financed and the effect, if any, of that financing on the tenants;

(4) A statement assessing the compatibility of the proposed capital additions with the residential character of the project; and

(5) A copy of the notice to tenants.

(b) If additional notice under § 245.720(c) is required, the mortgagor must submit to HUD the changes to the materials required under this section when the notice required under § 245.720(c) is served on the tenants.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.720 Rights of tenants to participate.

(a) The tenants (including any legal or other representatives acting for the tenants individually or as a group) have the right to inspect and copy the materials that the mortgagor is re-

*EDITORIAL NOTE: Section 245.10 was redesignated as § 245.105 at 50 FR 32403, Aug. 12, 1985.

quired to submit to HUD pursuant to § 245.715(a), for a period of at least 30 days from the date on which the notice required under § 245.710 is served. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed additions to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant comment period in the materials submitted to HUD pursuant to § 245.715, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed additions, before the mortgagor may submit its request to HUD for approval to make the major capital additions.

§ 245.725 Submission of request for approval to HUD.

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

(a) The mortgagor's written request for HUD approval to make major capital additions;

(b) Copies of all written tenant comments;

(c) The mortgagor's evaluation of the tenant comments on the proposed major capital additions;

(d) A certification by the mortgagor that it has complied with all of the requirements of §§ 245.710, 245.715 and 245.720 and this section; and

(e) Such additional materials as HUD may have requested in writing.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.730 Decision on request for approval.

(a) After consideration of the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor and the mortgagee in writing of its approval or disapproval of the proposed major capital additions, providing its reasons for such determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed additions, the notice must state the date on which the mortgagor intends to begin making the additions to the project (which must be at least 30 days from date of service of the notice and in accordance with the terms of existing leases).

PART 246—LOCAL RENT CONTROL

Subpart A—General Provisions

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AUTHORITY: Sec. 211, National Housing Act (12 U.S.C. 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 246.1 Scope and effect of regulations.

(a) The regulation of rents for a project coming within the scope of "Subpart B—Unsubsidized Insured Projects" is preempted under these regulations only when the Department determines that the delay or decision of the local rent control board, or other authority regulating rents pursuant to state or local law (hereinafter referred to as board) jeopardizes the Department's economic interest in a project covered by that subpart. The regulation of rents for projects coming within the scope of "Subpart C—Subsidized Insured Projects" is preempted in its entirety by the promulgation of these regulations. The regulation of rents for projects coming within the scope of "Subpart D—HUD-Owned Projects" rests within the exclusive jurisdiction of the Department.

(b) Any state or local law, ordinance, or regulation is without force and effect insofar as it purports to regulate rents of: (1) Projects for which a determination of preemption has been made pursuant to Subpart B, or (2) projects coming within the scope of Subpart C or D. Compliance with such law, ordinance, or regulation shall not be required as a condition of, or prerequisite to, the remedy of eviction, and any law, ordinance, or regulation which purports to require such compliance is similarly without force and effect.

(c) It is the purpose of the Department that these regulations shall bar all actions of a board that would in any way frustrate the purpose or effect of these regulations or that would in any way delay, prevent or interfere with the implementation of any increase in rental charges approved by HUD.

(d) These regulations may be offered as a defense to a proceeding by whomever initiated, which may be brought or threatened to be brought against any owner, mortgagor or managing agent of a project subject to these regulations who demands, receives or retains, or seeks to demand, receive or retain, rental charges approved by HUD, or as a basis for declaratory, injunctive or other relief against any person or agency, public or private, who attempts to enforce, or threatens to enforce, any state or local law, ordinance, or regulation which is without force and effect by reason of this regulation.

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984]

Subpart B—Unsubsidized Insured Projects

SOURCE: 44 FR 58504, Oct. 10, 1979. Redesignated at 49 FR 6713, Feb. 23, 1984, unless otherwise noted.

§ 246.4 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD, except those to which Subpart C applies.

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984]

§ 246.5 Rental charges.

The Department will generally not interfere in the regulation of rents by a rent control board or agency constituted under State or local laws (hereinafter referred to as board) for unsubsidized projects with mortgages insured or held by HUD. However, HUD will preempt the regulation of rents, together with any board regulations which require the mortgagor to offer a lease for a term in excess of one year, under certain conditions. This preemption may occur for such a project when the Department determines that the delay or decision of a board prevents the mortgagor from achieving a level of residential income necessary to maintain and operate adequately the project, which includes sufficient funds to meet the financial obligations under the mortgage."

§ 246.6 Initiation.

When a mortgagor determines that the permitted increase in rents as prescribed by the board will not provide a rent level necessary to maintain and operate adequately the project, and the mortgagor elects to request preemption under this subpart, it shall:

(a) File an application for whatever relief or redetermination is permitted under the State or local law and;

(b) Notify: (1) The tenants in accordance with § 246.7 of this subpart, (2) the appropriate HUD office pursuant to § 246.8, and (3) the board of the mortgagor's intention to file a request for preemption of local rent control regulation pursuant to the provisions of regulations in this subpart. This action may be taken if either the board's written decision is unacceptable to the mortgagor or no written decision is received from the board within 30 days of the mortgagor's request under paragraph (a) of this section.

§ 246.7 Notice to tenants.

At least 30 days before filing a formal request to HUD for preemption of local rent control regulations, the mortgagor shall notify the tenants of its intention to so file. Copies of the Notice shall be:

(a) Delivered directly or by mail to each tenant; and

(b) Posted in at least 3 conspicuous places within each structure or building in which the affected dwelling units are located.

The Notice shall contain the addresses where the materials, which constitute a complete submission as required by § 246.8 in support of the proposed preemption request, are to be made available to tenants as well as the required information in the follow'ng equivalent format:

NOTICE TO TENANTS OF INTENTION TO FILE A REQUEST TO HUD FOR PREEMPTION OF LOCAL RENT CONTROL REGULATIONS

Date of Notice _____

Take notice that on (Date) we requested the (Name) board to review our application for redetermination of permitted rents.

Take further notice that on (Date), if the (Name) board fails to approve an income level necessary to maintain and operate adequately the project, or to act upon our request, we plan to file a request for preemption of local rent control regulations for (Name of Apartment Complex) with the United States Department of Housing and Urban Development (HUD) which will result in an increase in your rental rate as provided within the terms of your lease. The requested preemption action is supported by the following:

(1) HUD approved Gross Potential Income: Year approved, ——, $————.

(2) Current Total Residential Rents Allowed by Local Rent Control Board, $————.

(3) Projected Total Annual Residential Rents Allowable Under Local Board Regulations 6 Months After Date of this Notice, $————.

(4) Income Required to Operate Project as Supported by Profit and Loss Statement Being Submitted to HUD, $————.

Copies of the materials that we intend to submit to HUD in support of our request will be available during normal business hours as well as one evening a week after business hours which will be (Day) at (Address) for a period of 30 days from the date of this Notice. The materials may be inspected and copied by tenants of (Name of Apartment Complex and HUD Project No.) and if the tenants wish, by legal or other representatives duly authorized in writing to act for one or more of the tenants.

During a period of 30 days from the date of this notice, tenants of (Name of Apartment Complex and HUD Project No.) may submit written comments on the proposed preemption request to us at (Address). Tenant representatives may assist tenants in preparing those comments. The inspection and comment period will be extended as necessary to (a) assure a 30-day comment period on a complete mortgagor's submission and (b) to allow at least 5 days to comment on any written decision made by the board, if the decision is received by the mortgagor on or before the expiration of the thirty-day period and it was not available to the tenants during the first 25 days of the 30-day period. These comments will be transmitted to HUD, along with our evaluation of them and our preemption request. You may also send a copy of your comments directly to HUD at the following address: United States Department of Housing and Urban Development, (address of local HUD field office with jurisdiction over preemption of rents for the project) Attention: Director, Housing Re: (Project No.) and (Name of Apartment Complex). HUD will approve or disapprove the preemption request in whole or in part upon reviewing the materials and comments. When HUD advises us in writing of its decision on our request, you will be notified at least 30 days before any change in the rental structure is put into

effect, in accordance with the terms of existing leases.

(Name of mortgagor or managing agent)

The mortgagor shall comply with all representations made in this Notice.

§ 246.8 Materials to be submitted to HUD in support of the preemption request.

(a) After posting or delivery of the Notice as required by § 246.7, the mortgagor shall immediately send HUD notification of its intention to file a preemption request, to include:

(1) The written Notice to the tenants, which will state the date of its posting and distribution.

(2) An annual Statement of Profit and Loss, on a form prescribed by the Commissioner, audited by an independent public accountant and covering the most recently ended accounting year, and if more than four months have elapsed since the date of the Profit and Loss Statement, an unaudited accrual Profit and Loss Statement on a form prescribed by the Commissioner for the intervening period since the date of the annual statement, with the mortgagor's certification as to its accuracy.

(3) A certified statement which provides a separate breakdown for the percentage of vacancies for the present and previous year.

(4) A certified statement which provides a separate breakdown of the actual rent loss due to nonpayment of rent for the past 2 years.

(5) A certified statement which provides a separate breakdown of rent loss due to tenant turnover for the past 2 years.

(6) A certified statement covering known approved rate or cost increases not yet experienced by the project which can be documented by the following:

(i) Tax rates or appraisals,

(ii) Utility rates,

(iii) Contracts for employees or services,

(iv) Insurance, and

(7) A certified statement covering known decreases of rates or costs not yet experienced by the project which have been approved and can be documented as follows:

(i) Tax rates or appraisals,

(ii) Utility rates,

(iii) Contracts for employees or services,

(iv) Insurance.

If there are none, the mortgagor must so certify.

(8) A copy of the full application to the board with supporting documentation.

(b) The local HUD office shall review the mortgagor's submission promptly upon receipt, to ascertain that it is complete as required by paragraph (a) of this section. Should the submission be found to be incomplete, the local HUD office shall notify the mortgagor within 48 hours of the review of its determination that further material is necessary to constitute a complete submission as defined in paragraph (a) of this section.

(c) When the submission is complete, the HUD office shall hold the mortgagor's submission as specified in paragraph (a) of this section in abeyance until a preemption request is received pursuant to § 246.9.

(d) If the mortgagor subsequently resubmits any change to the submission as described in paragraphs (a)(1) through (7) of this section, it will be required to provide the tenants with an additional 30 days to comment.

§ 246.9 Request for preemption.

(a) Upon expiration of the period for tenant comments required by this rule and after review of the comments submitted to it, the mortgagor may submit its request for preemption. That request must include the following:

(1) A certification by the mortgagor following the requirements specified in paragraph (b) of this section;

(2) Copies of all written comments submitted by the tenants to the mortgagor;

(3) The mortgagor's evaluation of the tenant's comments with respect to the request; and

(4) The board's decision or a statement from the mortgagor certifying that a decision from the board has not been received.

(b) The certification of the mortgagor as required by paragraph (a)(1) of

this section shall include the following:

(1) That the Notice required by § 246.7 was given pursuant to the provisions of that section;

(2) That the mortgagor has taken reasonable steps to assure that the substance of the Notice has been conveyed to each resident household, and that the mortgagor exercised its best efforts to assure that the posted Notices were maintained intact and in legible form for the specified thirty (30) days;

(3) That: (i) The copies of the materials submitted in support of the preemption request were located in a place reasonably convenient to tenants in the project during normal business hours and at least one evening a week after business hours, and (ii) that requests by tenants to inspect such materials, as provided for in the Notice, were honored;

(4) That copies of all comments received from the tenants were considered and are being transmitted to HUD together with the certifications; and

(5) A statement that "under the penalties and provisions of Title 18, United States Code, section 1001, the statements contained in this application and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete."

(c) Should the mortgagor receive a delayed decision from the board after filing its preemption request, HUD shall be informed immediately and furnished with a copy of the board's decision.

§ 246.10 HUD procedures.

(a) The local HUD office will review the information submitted by the mortgagor together with the decision of the board, if any. The local HUD office will, if it finds that the delay or decision of the board fails to provide adequate residential income to protect the Department's economic interest in the projects and the board will not modify its position to the satisfaction of the local HUD office, make a report with appropriate recommendations concerning the actions that should be taken by HUD to the Office of Multifamily Housing Management and Occupancy, Headquarters. The report shall be sent to the Office of Multifamily Housing Management and Occupancy, Headquarters, and shall include appropriate recommendations concerning the action that should be taken by HUD.

(b) The Office of Multifamily Housing Management and Occupancy will review the report and will consider whether to preempt the board's regulation. If it finds that the income level permitted by the board is inadequate to maintain the project as described in § 246.5, it shall issue a formal certification to the board that its authority has been preempted as to such rents. Copies of the certification shall be transmitted to the mortgagor, the local HUD office, and the board.

§ 246.11 Notification of action on preemption request.

(a) After HUD has considered the preemption request which meets the requirements of § 246.9 and has made its determination to approve or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval or disapproval. The mortgagor shall make known to tenants, by posting or delivery in the manner outlined in § 246.7, the reasons for approval or disapproval.

(b) The mortgagor may effect collection of the HUD-approved income level which is set at the time of the preemption determination after the expiration of 30-days notice to the tenants, subject to the terms and rights a tenant may have under the existing lease.

(c) Once the project reaches the income level approved under these procedures, the project will be returned to the control of the local rent control board covering both the rents and the terms of prospective leases.

§ 246.12 Preemption of prospective term of lease.

(a) In those instances where it will take more than 60 days (2 months) for the project to reach the new income levels, HUD preemption of prospective lease terms shall be effective for those new or renewed leases which by regu-

lation of a local rent control board would require the mortgagor to offer a lease for a term in excess of one year.

(b) As a condition for HUD preemption, the mortgagor must give only one-year leases to tenants whose leases expire during the preemption period.

Subpart C—Subsidized Insured Projects

§ 246.20 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of (a) interest reduction payments under section 236 of the National Housing Act; (b) below-market interest rates under sections 221(d) (3) and (5) of the National Housing Act; (c) direct loans at below-market interest rates under section 202 of the Housing Act of 1959; (d) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; (e) housing assistance payments under 24 CFR Part 886, Subpart A (Section 8 Loan Management Set Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or (f) housing assistance payments pursuant to a contract covering all the units in the project under section 8 of the United States Housing Act of 1937 or section 23 of that Act, as in effect before January 1, 1975. This subpart also applies to projects with mortgages insured or held by HUD that receive housing assistance payments pursuant to a contract covering fewer than all units in the project, but only with respect to those units occupied by tenants receiving housing assistance thereunder.

[51 FR 20273, June 18, 1986]

§ 246.21 Rental charges.

The Department finds that it is necessary and desirable to minimize defaults by the mortgagor in its financial obligations with regard to projects covered by this subpart, and to assist mortgagors to preserve the continued viability of those projects as a housing resource for low-income families. The Department also finds that it is necessary and desirable to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards, (hereinafter referred to as board), or other authority, acting pursuant to state or local law as it affects projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

§ 246.22 Procedures.

(a) The mortgagor shall file its application for approval of increases in rental charges with the appropriate local office of HUD.

(b) The local HUD office will process the application for increases in rental charges in accordance with HUD's regulations, including Part 245 of this chapter, and instructions and procedures, all adopted pursuant to the statutory authority described in § 246.8, and shall notify in writing any board in the area in which the project is located that it is processing the application and, that, pursuant to this subpart, HUD has preempted the entire field of rent regulation by a board acting pursuant to state or local law as it affects the project.

(c) The mortgagor may effect collection of the new rents in accordance with the procedures described in Part 245, Subpart D of this chapter. The mortgagor shall furnish the board a schedule of any new rents approved by HUD within ten (10) days after the approved rents have become effective. Notice to the board of the approved increases in rents does not confer upon the board a right to approve or disapprove the Department's action or to exercise jurisdiction over the implementation of the rent increases by the mortgagor. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

Subpart D—HUD-Owned Projects

§ 246.30 Rental charges.

The Department has exclusive jurisdiction over the rents of all projects which it owns, irrespective of the existence, or the provisions, of any State or local rent control law or ordinance.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

§ 246.31 Procedures.

(a) The local HUD office will notify in writing any local rent control board (hereinafter referred to as board) in the area in which the project is located that it is considering increasing the rents for a project within the scope of this subpart, and that the increases are expected to become effective after the expiration of thirty (30) days' notice to the tenants, subject to whatever rights a tenant may have under a lease. The local HUD office will also notify the board that, pursuant to this subpart, the Department has exclusive jurisdiction over the rents for the project.

(b) After the increases have become effective, the local HUD office will furnish the board a schedule of the new rents that are being charged by HUD. Notice to the board of the increased rents does not confer upon the board a right to approve or disapprove of the Department's action, or to exercise jurisdiction over the implementation of the rent increases by the Department. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

Subpart A—Subsidized Projects

Sec.

247.1 Applicability.
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247.8 Incorporation by reference.
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AUTHORITY: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); secs. 211, 221, and 236 National Housing Act (12 U.S.C. 1715b, 1715*l*, and 1715z-1); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 41 FR 43330, Sept. 30, 1976, unless otherwise noted. Redesignated at 49 FR 6713, Feb. 23, 1984.

Subpart A—Subsidized Projects

§ 247.1 Applicability.

Except as provided in §§ 247.5 and 247.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupancy of a tenant in a subsidized project as defined in § 247.2(e). (Termination of tenancy of a family assisted with tenant-based assistance under the Section 8 Existing Housing Certificate or Housing Voucher Program is not subject to this part.)

[54 FR 236, Jan. 4, 1989]

§ 247.2 Definitions.

(a) "Eviction" means the dispossession of the tenant from the leased unit as a result of the termination of the tenancy, including a termination prior to the end of a term or at the end of a term.

(b) "Landlord" means either the owner of the property or his representative, or the managing agent or his representative, as shall be designated by the owner.

(c) "Rental agreement" means all agreements, written or oral, between the landlord and tenant (and valid rules and regulations adopted by the landlord pursuant to a written agreement) relating to the use and occupancy of a dwelling unit and surrounding premises.

(d) "State landlord and tenant act" means any state statute or local ordinance which imposes obligations on a landlord and tenant in connection with the occupancy of a dwelling unit and surrounding premises and which provides that violations of such obligations by the tenant constitute grounds for eviction.

(e) "Subsidized project" means a multifamily housing project (with the exception of a project owned by a cooperative housing mortgagor corporation or association) that receives the benefit of subsidy in the form of: below-market interest rates under section 221(d) (3) and (5), interest reduction payments under section 236 of the National Housing Act, or below market interest rate direct loans under section 202 of the Housing Act of 1959. For purposes of this Part 247 "subsidized project" also includes those units in a housing project that receive the benefit of rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; or housing assistance payments through: Project-Based Assistance under the Section 8 Certificate Program (24 CFR Part 882, Subpart G), Section 8 in connection with Section 202 Loans for Housing for the Elderly or Handicapped (24 CFR Part 885), the Section 8 Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A) or the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C).

[41 FR 43330, Sept. 30, 1976. Redesignated at 49 FR 6713, Feb. 23, 1984, and amended at 53 FR 3368, Feb. 5, 1988; 54 FR 236, Jan. 4, 1989]

§ 247.3 Entitlement of tenants to occupancy.

(a) *General.* The landlord may not terminate any tenancy in a subsidized project except upon the following grounds:

(1) Material noncompliance with the rental agreement,

(2) Material failure to carry out obligations under any state landlord and tenant act, or

(3) Other good cause.

No termination by a landlord under paragraph (a)(1) or (2) of this section shall be valid to the extent it is based upon a rental agreement or a provision of state law permitting termination of a tenancy without good cause. No termination shall be valid unless it is in accordance with the provisions of § 247.4.

(b) *Notice of good cause.* The conduct of a tenant cannot be deemed other good cause under § 247.3(a)(3) unless the landlord has given the tenant prior notice that said conduct shall henceforth constitute a basis for termination of occupancy. Said notice shall be served on the tenant in the same manner as that provided for termination notices in § 247.4(b).

(c) *Material noncompliance.* The term "material noncompliance with the rental agreement" includes:

(1) One or more substantial violations of the rental agreement;

(2) Repeated minor violations of the rental agreement that (i) disrupt the livability of the project, (ii) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (iii) interfere with the management of the project, or (iv) have an adverse financial effect on the project;

(3) Failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including failure to meet the disclosure and vertification requirements for Social Security Numbers, as provided by 24 CFR part 200, subpart T, or 24 CFR part 750 (as appropriate)), or knowingly providing incomplete or inaccurate information; and

(4) Non-payment of rent or any other financial obligation due under the rental agreement (including any portion thereof) beyond any grace period permitted under State law, except that the payment of rent or any other financial obligation due under the rental agreement after the due date, but within the grace period permitted under State law, constitutes a minor violation.

(Approved by the Office of Management and Budget under control number 2502-0204)

[41 FR 43330, Sept. 30, 1976. Redesignated at 49 FR 6713, Feb. 23, 1984, and amended at 54 FR 39697, Sept. 27, 1989]

§ 247.4 Termination notice.

(a) *Requisites of Termination Notice.* The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.

(b) *Manner of service.* The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first class letter provided for in this paragraph is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) *Time of service.* When the termination of the tenancy is based on other good cause pursuant to § 247.3(a)(3), the termination notice shall be effective, and the termination notice shall so state, at the end of a term and in accordance with the termination provisions of the rental agreement, but in no case earlier than 30 days after receipt of the tenant of the notice. Where the termination notice is based on material noncompliance with the rental agreement or material failure to carry out obligations under a state landlord and tenant act pursuant to § 247.3(a)(1) or (2), the time of service shall be in accord with the rental agreement and state law.

(d) *Modification of rental agreement.* Notwithstanding any other provision of this subpart, the landlord may with the prior approval of HUD modify the terms and conditions of the rental agreement, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant, together with the tender of a revised rental agreement or an addendum revising the existing rental agreement: Any increase in rent shall in all cases be governed by 24 CFR Parts 245, 246 and other applicable HUD regulations. This notice and tender shall be served on the tenant in the same manner as provided for in § 247.4(b) and must be received by the tenant at least 30 days prior to the last date on which the tenant has the right to terminate the tenancy without being bound by the codified terms and conditions. The tenant may accept the modified terms and conditions by executing the tendered revised rental agreement or addendum, or may reject the modified terms and conditions by giving the landlord written notice in accordance with the rental agreement that he intends to terminate the tenancy.

(e) *Specificity of notice in rent nonpayment cases.* In any case in which a tenancy is terminated because of the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity set

forth in paragraph (a)(2) of this section.

(f) *Failure of tenant to object.* The failure of the tenant to object to the termination notice shall not constitute a waiver of his rights to thereafter contest the landlord's action in any judicial proceeding.

[41 FR 43330, Sept. 30, 1976, as amended at 48 FR 22915, May 23, 1983. Redesignated at 49 FR 6713, Feb. 23, 1984]

§ 247.5 Inapplicability to substantial rehabilitation or demolition.

This subpart shall not apply in any case in which the landlord terminates the occupancy of a tenant as a direct result of a determination, concurred in by HUD, to substantially rehabilitate or demolish the project or to dispose of the project to a purchaser who purchases for the purpose of substantial rehabilitation or demolition.

§ 247.6 Eviction.

(a) *General.* The landlord shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of this subpart.

(b) *Limitations on allegations of new grounds.* In any judicial action instituted to evict the tenant, the landlord must rely on grounds which were set forth in the termination notice served on the tenant under this subpart. The landlord shall not, however, be precluded from relying on grounds about which he or she had no knowledge at the time the termination notice was sent.

(c) *State and local law.* A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by this subpart, except where such State or local law has been preempted under Part 246 of this chapter or by other action of the United States.

[48 FR 22915, May 23, 1983. Redesignated and amended at 49 FR 6713, 6715, Feb. 23, 1984]

§ 247.7 Implementation.

Every rental agreement entered into or renewed on and after the date on which this subpart is applicable to such tenant shall contain appropriate provisions implementing this subpart.

Subpart B—HUD-Owned Projects

§ 247.8 Incorporation by reference.

All of the provisions of Subpart A of this part covering certain multifamily projects (excepting § 247.5) apply with full force to the property described in § 247.9 and they are hereby incorporated by reference.

§ 247.9 Applicability of procedures.

The procedures outlined in this subpart apply to all decisions to terminate the occupancy of a tenant by the termination of a lease prior to the end of its term or at the end of a term where the tenant resides in any multifamily project which is presently owned by HUD, regardless of whether said project was a subsidized project prior to the acquisition of title by HUD.

§ 247.10 Inapplicability to substantial rehabilitation or demolition; right of disposition unimpaired.

This subpart shall not apply in any case in which HUD terminates the occupancy of a tenant as a direct result of a determination by HUD to substantially rehabilitate or demolish the project or to dispose of the project to a purchaser who purchases for the purpose of substantial rehabilitation or demolition. Nothing in this subpart should be construed to affect in any way the right of HUD to exercise its full statutory authority and discretion to dispose of property acquired pursuant to the National Housing Act.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

Subpart A—General

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248.261 Agreements implementing plans of action and State strategies.

AUTHORITY: Secs. 201-235, Housing and Community Development Act of 1987, Pub. L. 100-242 (12 U.S.C. 1715*l* note); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 11229, Apr. 5, 1988 (interim), unless otherwise noted.

Subpart A—General

§ 248.101 Purpose.

The purpose of this part is to—

(a) Preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance, without unduly restricting the owners' prepayment rights;

(b) Minimize the involuntary displacement of tenants currently residing in such housing; and

(c) Work in partnership with State and local governments and the private sector in the provision and operation of housing that is affordable to low income families.

§ 248.103 Effective date.

The requirements of this part apply to any project that is eligible low income housing on or after February 5, 1988.

§ 248.105 Termination.

Section 203 of the Housing and Community Development Act of 1987 provides that sections 221 through 235 of the Act, upon which this part is based, expire on February 5, 1990. This part will likewise be terminated or amended on the basis of the expiration or amendment of sections 221 through 235 of the Act.

§ 248.107 Alternative moratorium provision.

(a) If any court of the United States or any State invalidates the requirements established in this part, an owner of eligible low income housing located in the geographic area subject to the jurisdiction of such court may not prepay, and the mortgagee may not accept prepayment of, a mortgage on such housing until February 5, 1990.

(b) A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section is grounds for administrative action under Part 25 of this title and for seeking any other remedies available by law.

Subpart B—Prepayments and Plans of Action

§ 248.201 Definitions.

Adjusted Income. Annual income, less allowances as specified in § 215.21 of this chapter.

Allowable Distributions. The amount of cash or other assets that the owner may withdraw from the project under the terms of the regulatory agreement, applicable regulations, and administrative instructions, including the segregation of cash or assets for subsequent withdrawal, and excluding repayment of advances made for reasonable and necessary expenses incident to the operation and maintenance of the project.

Capital Improvement Loan. A direct loan originated by the Commissioner pursuant to Section 201(k) of the Housing and Community Development Amendments of 1978.

Eligible Low Income Housing. Any housing financed by a mortgage—

(a) That is—

(1) Insured or held by the Commissioner under Section 221(d)(3) of the National Housing Act and assisted under Part 215 of this chapter or

project-based assistance under Parts 880, 881 or 886 of this title;

(2) Insured or held by the Commissioner under Part 221 of this chapter and bearing a below-market interest rate as provided under § 221.518(b) of this chapter;

(3) Insured, assisted, or held by the Commissioner under Part 236 of this chapter, and subject to a regulatory agreement; or

(4) A purchase money mortgage held by the Commissioner with respect to a project which, immediately prior to HUD's acquisition, would have been classified under paragraphs (a)(1), (2), or (3) of this definition; and

(b) That, under regulation or contract in effect before February 5, 1988, is, or within one year from the date of the notice of intent would become, eligible for prepayment without the prior approval of the Commissioner.

Equity. The Owner's investment in the housing project, as approved or determined by the Commissioner.

Equity Loan. A loan insured by the Commissioner under Part 241, Subpart E of this chapter.

Fair Market Rent. The fair market rent as defined under § 882.102 of this title, applicable to the jurisdiction in which the housing is located.

Flexible Subsidy Assistance. Assistance provided by the Commissioner under Part 219 of this chapter, other than a capital improvement loan.

Good cause. Temporary or permanent uninhabitability of the project justifying relocation of all or some of the project's tenants, or actions of the tenant that, under the terms of the tenant's lease and applicable regulations, constitute a basis for eviction.

Limited Equity Cooperative. A cooperative housing corporation in which income eligibility of purchasers or appreciation upon resale of membership shares, or both, are restricted in order to maintain the housing as available to and affordable by low and moderate income families and persons.

Low Income Affordability Restrictions. Limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility with respect to eligible low income housing.

Lower Income Families. Families or persons whose incomes do not exceed the levels established for lower income families under Part 813 of this title.

Moderate Income Families. Families or persons whose incomes are between 80 percent and 95 percent of median area income, as determined by the Commissioner with adjustments for smaller and larger families.

Mortgage. The mortgage or deed of trust insured or held by the Commissioner under Part 221 or 236 of this chapter, or the purchase money mortgage taken back by the Commissioner in connection with the sale of a HUD-owned project and held by the Commissioner.

Notice of Intent. An owner's notification of its intent to seek prepayment of its mortgage or amendment of the mortgage or regulatory agreement pursuant to this part.

Owner. The mortgagor or trustor under the mortgage secured by eligible low income housing.

Plan of Action. A plan providing for either prepayment of the mortgage or continuation of the mortgage in place, and providing for either the termination of low income affordability restrictions, or the continuation of the project's use as lower income housing under modified terms and conditions.

Regulatory Agreement. The agreement executed by the owner and the Commissioner providing for the Commissioner's regulation of the operation of the project.

Reserve for Replacements. The escrow fund established under the regulatory agreement for the purpose of ensuring the availability of funds for needed repair and replacement costs.

Residual Receipts Fund. The fund established under the regulatory agreement for holding cash remaining after deducting from surplus cash, as defined by the regulatory agreement, the amount of all allowable distributions.

Return on Investment. The amount of allowable distributions, tax benefits, and other income or benefits received by the owner, as a percentage of the equity.

Section 8. Assistance provided under Parts 800 through 886 of this title, or

assistance provided under HUD's housing voucher program.

Termination of Low Income Affordability Restrictions. Any elimination in whole or in part of low income affordability restrictions (other than the relaxation of restrictions under an approved plan of action under § 248.233 of this chapter).

Use Agreement. An agreement or covenant which is executed and recorded in the appropriate land records in connection with the prepayment of a mortgage and has lien priority over other mortgages, which is binding upon the owner and its successors and assigns, which is enforceable by the Commissioner or by tenants, and which restricts or governs the use and operation of the project with respect to rent levels and increases, relocation, and, where appropriate, tenant eligibility, civil rights and other requirements.

Very Low Income Families. Families or persons whose incomes do not exceed the level established for very low income families under § 813.102 of this title.

§ 248.203 General prepayment limitation.

(a) An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Commissioner.

(b) A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section is grounds for administrative action under Parts 24 and 25 of this title, in addition to any other remedies available by law.

§ 248.211 Notice of intent to prepay.

(a) An owner of eligible lower income housing seeking to prepay its mortgage or to negotiate changes in the terms of the mortgage or regulatory agreement in accordance with this part shall file a notice of intent with the HUD field office in whose jurisdiction the project is located, and shall file a duplicate copy with the HUD Headquarters Office of Multifamily Housing Management. The notice of intent shall identify the project by name, project number and location, briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken, and the reason the owner seeks to prepay the mortgage or change the terms of the mortgage or regulatory agreement, and briefly describe any contacts that the owner has made or is making with other governmental agencies or other interested parties in connection with the notice of intent.

(b) The owner simultaneously shall file the notice of intent with the appropriate State or local government agency for the jurisdiction in which the housing is located.

(c) Upon receipt of a notice of intent, the Commissioner will provide the owner with information that the owner needs to prepare a plan of action. This information shall include information regarding the Commissioner's standards under § 248.221 of this part regarding the approval of a plan of action involving termination of low income affordability restrictions; in addition, it shall include at a minimum a list of the Federal incentives authorized under § 248.231 of this part for those projects for which a plan of action involving termination of low income affordability restrictions would not be approvable.

(d) Filing a notice of intent with the Commissioner will lead to one of the following results:

(1) The Commissioner will approve the prepayment pursuant to § 248.221 of this part, and all low income affordability restrictions will be terminated, except with regard to protection of current very low income, low income and moderate income tenants;

(2) The Commissioner will approve prepayment, but the owner will receive incentives pursuant to § 248.231 of this part from the Federal government in return for agreeing to conditions related to the continued use of the project as low-income housing in accordance with § 248.233 of this part;

(3) The Commissioner will not approve prepayment, but will provide incentives to the owner pursuant to § 248.231 of this part in accordance with a plan of action meeting the standards of § 248.233 of this part;

(4) The Commissioner will not approve prepayment, but, after failing to

reach agreement on a negotiated plan of action, the owner and the Commissioner will agree to a package of incentives and restrictions prescribed by § 248.241 of this part; or

(5) The Commissioner will not approve prepayment, and will not offer incentives of any kind.

§ 248.213 Plan of action.

(a) *Preparation and submission.* The owner shall submit the plan of action to the Commissioner in such form and manner as the Commissioner shall prescribe. The owner may submit the plan of action simultaneously to the appropriate State or local government agency, which shall, in reviewing the plan, consult with representatives of the tenants of the housing.

(b) *Contents.* The plan of action shall include:

(1) A description of any proposed changes in the status or terms of the mortgage or regulatory agreement, which may include a request for incentives to extend the low income use of the housing, as authorized under § 248.231 of this part;

(2) A description of any assistance that could be provided by State or local government agencies, as determined by prior consultation between the owner and the agencies;

(3) A description of any proposed changes in the low income affordability restrictions;

(4) A description of any proposed change in ownership related to the plan of action or prepayment;

(5) An assessment of the effect of the proposed changes on existing tenants;

(6) A statement of the effect of the proposed changes on the supply of housing affordable to low and very low income families in the community within which the housing is located and in the area that the housing could reasonably be expected to serve; and

(7) Other information determined by the Commissioner to be necessary to evaluate the proposed plan of action and achieve the purposes of this part.

§ 248.215 Notification of deficiencies.

Not later than 60 days after receipt of a plan of action, the Commissioner will notify the owner in writing of any deficiencies that prevent the plan of action from being approved. If deficiencies are found, the notice shall describe ways in which the plan of action could be revised to meet the criteria for approval.

§ 248.217 Revisions to plan of action.

The owner may from time to time revise the plan of action before its approval as may be necessary to obtain the Commissioner's approval thereof.

§ 248.219 Notification of approval.

(a) Not later than 180 days after initial receipt of a plan of action, or within such longer period as the owner requests, the Commissioner shall notify the owner in writing whether the plan of action, including any revisions, is approved.

(b) If approval is withheld, the notice will—

(1) Describe the reasons for withholding approval;

(2) Describe the actions that could be taken to meet the criteria for approval; and

(3) Afford the owner a reasonable opportunity to revise the plan of action and seek approval.

§ 248.221 Approval of a plan of action that involves termination of low income affordability restrictions.

The Commissioner may approve a plan of action that involves termination of the low income affordability restrictions only upon a written finding that—

(a) Implementation of the plan of action will not materially increase economic hardship for current very low income, low income and moderate income tenants or involuntarily displace current very low income, low income and moderate income tenants (except for good cause) where comparable and affordable housing is not readily available. The owner will agree to execute and allow the recordation of use agreements to safeguard current tenants against such adverse effects. The plan of action generally will not be considered materially to increase economic hardship for current tenants if—

(1) In the case of a project that is to be converted to cooperative or condominium ownership, very low income, low income and moderate income tenants who are unable or unwilling to purchase cooperative shares or condominium units are provided relocation assistance sufficient to secure adequate, comparable replacement housing at rentals not exceeding the levels set forth in paragraph (a)(2) of this section, or are allowed to remain as tenants, paying rents not exceeding such levels; and

(2) In the case of a project which will continue as rental housing, the Commissioner determines that comparable and affordable replacement housing is available in the community and that tenants will be provided reasonable relocation assistance. If the Commissioner determines that comparable and affordable replacement housing is not available, a material increase in economic hardship will not occur when rent contributions for current tenants do not exceed the following percentages: 30 pecent of 50 percent of median area income, adjusted by family size, for tenants who are very low income tenants at the time of the increase, 30 percent of 80 percent of median area income, adjusted by family size, for tenants who are low income tenants at the time of the increase, and 30 percent of 95 percent of median area income, adjusted for family size, for tenants who are moderate income tenants at the time of the increase. The Commissioner may require that increases in rents for some or all of the such current tenants (except for increases made necessary by increased operating costs) allowed under this paragraph be phased in gradually; and

(b)(1) The supply of vacant, comparable housing is sufficient to ensure that the prepayment will not materially affect—

(i) The availability of decent, safe and sanitary housing affordable to low income and very low income families in the area that the housing could reasonably be expected to serve;

(ii) The ability of lower income and very low income families to find decent, safe and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located; or

(2) The plan of action has been approved by the appropriate State agency and any appropriate local government agency for the jurisdiction in which the housing is located as being in accordance with a State strategy approved by the Commissioner under § 248.223 of this part.

§ 248.223 Alternative State strategy.

(a) The Commissioner may approve a State strategy providing for State approval of plans of action that involve termination of low income affordability restrictions only upon finding that it is a practicable statewide strategy that ensures at a minimum that—

(1) Current tenants will not be involuntarily displaced (except for good cause);

(2) Housing opportunities for minorities will not be adversely affected in the communities in which the housing is located;

(3) Any increase in rent for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenants or fair market rent, whichever is lower, and any increase not necessitated by increased operating costs shall be phased in equally over not less than 3 years if the increase exceeds 10 percent;

(4) Housing approved under the State strategy will remain affordable to very low income, low income and moderate income families for not less than the remaining term of the mortgage, if the housing is to be made available for rental use, or for not less than 40 years, if the housing is to be made available for homeownership;

(5)(i) Not less than 80 percent of all units in eligible low income housing approved under the State strategy will be retained as affordable to families or persons meeting the income eligibility standards for initial occupancy that applied to the housing on January 1, 1987; and

(ii) Not less than 60 percent of the units in any one project will remain available to and affordable by such families or persons, within which not

less than 20 percent of the units will remain available to and affordable by very low income families;

(6) Expenditures for rehabilitation, maintenance and operation will be at a level necessary to maintain the housing as decent, safe and sanitary for the period specified in paragraph (a)(4) of this section;

(7) Not less than 25 percent of new assistance required to maintain the housing as available to and affordable by low income families in accordance with this section shall be provided through State and local actions, such as tax exempt financing, low income tax credits, State or local tax concessions, and other incentives provided by the State or local governments; and

(8) For each unit of eligible low income housing approved under the State strategy that is not retained as affordable housing to families or persons meeting the income eligibility standards for initial occupancy on January 1, 1987, the State will provide, with State funds, one additional unit of comparable housing in the same market area that is available to and affordable by such families and persons. Such units will be provided by conversion of existing units or construction of new units. These units or funds will be made available before the Commissioner approves the State strategy.

(b) *Additional requirements.* (1) The State must enter into all agreements necessary to carry out the State strategy before receiving the Commissioner's approval.

(2) Each State strategy shall include any other provision that the Commissioner determines to be necessary to implement the approved State strategy.

§ 248.231 Incentives to extend low income use.

The Commissioner may agree to provide one or more of the following incentives to induce the project owner to extend the low income use of the project, if the Commissioner determines that such incentives are warranted under the standards in § 248.233 of this part:

(a) An increase in the allowable distribution, or other measures to increase the rate of return;

(b) Revisions to the method of calculating equity;

(c) Increased access to residual receipts funds or excess reserve for replacements funds;

(d) Provision of insurance for an equity loan;

(e) An increase in the rents permitted under an existing section 8 contract, within statutory and regulatory limits otherwise applicable, or (subject to the availability of amounts provided in appropriations Acts) additional assistance under section 8 or an extension of any project-based assistance attached to the housing;

(f) Provision of a capital improvement loan;

(g) Other actions to facilitate a transfer or sale of the housing to a qualified nonprofit organization, limited equity tenant cooperative, public agency, or other entity acceptable to the Commissioner, such as expedited review of a request for approval of a transfer of physical assets;

(h) Provision of flexible subsidy assistance; and

(i) Any other incentive for which the owner is eligible.

§ 248.233 Approval of a plan of action that includes incentives.

The Commissioner may approve a plan of action that includes incentives, whether or not the plan of action allows for the prepayment of the mortgage, only upon a finding that—

(a) After taking into account local market conditions, the incentives are necessary to achieve the purposes of this part;

(b) The incentives are necessary to provide a fair rate of return to the owner. Incentives will only be provided in cases where the project's current use does not represent its highest and best use;

(c) The incentives are the least costly alternative for the Federal Government to achieve the purposes of this part with respect to the housing;

(d) Binding commitments have been made to ensure that—

(1) The housing will be retained as housing affordable for very low income families, lower income fami-

best copy available

lies, and moderate income families for the remaining term of the mortgage;

(2) Throughout the remaining term of the mortgage, adequate expenditures will be made for the proper maintenance and operation of the housing;

(3) Current tenants will not be involuntarily displaced (except for good cause);

(4) Any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the fair market rent, whichever is lower;

(5) Any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs) will be phased in equally over a period of not less than 3 years, if the increase is 30 percent or more, and will be limited to not more than 10 percent per year, if the increase is more than 10 percent but less than 30 percent;

(6) Assistance under section 8 will be accepted by the owner if necessary to mitigate any adverse effect of the rent increases on current tenants eligible for section 8 assistance; and

(7) Rents for units becoming available to new tenants will be at levels approved by the Commissioner that will ensure, to the extent practicable, that the units will be available to and affordable by the same proportions of very low income families, lower income families, and moderate income families as resided in the housing as of January 1, 1987.

(i) For purposes of paragraph (d)(7) of this section, the percentage of moderate income families in occupancy as of January 1, 1987 shall include families who were admitted to the project as very low income, low income, or moderate income families but whose incomes had increased beyond the limit for moderate income families by January 1, 1987.

(ii) In approving rents under paragraph (d)(7) of this section, the Commissioner will take into account any additional incentives provided under this part and will make provision for annual rent adjustments necessary as a result of future reasonable increases in operating costs.

§ 248.235 Right of conversion to alternative prepayment system.

Any agreement to extend low income affordability restrictions under § 248.233 of this part shall, until February 5, 1992, provide the owner the right to convert to any system of incentives and restrictions provided in law during that period, with adjustments determined by the Commissioner to be appropriate to compensate for the value of any benefits the owner has received under this part.

§ 248.241 Modification of existing regulatory agreements.

(a) If a plan of action is not approved within 300 days after initial submission, the Commissioner may, upon request of the owner, modify existing regulatory agreements to—

(1) Prevent involuntary displacement of current tenants (except for good cause);

(2) Ensure that adequate expenditures will be made for maintenance and operation of the housing;

(3) Extend any expiring project-based assistance on the housing for the term of the agreement;

(4) Permit an increase in the allowable distribution that could be accommodated by an increase in the rents on occupied units to a level no higher than 30 percent of the adjusted income of the tenants, as determined by the Commissioner, except that rents shall not exceed the fair market rent, and any resulting increase in rents for current tenants shall be phased in equally over a period of no less than 3 years, unless such increase is less than 10 percent; and

(5) Ensure that units becoming vacant during the term of the agreement are made available in accordance with § 248.233(d)(7) of this part.

(b) *Expiration.* Agreements entered into under this section shall expire on February 5, 1992. Upon such expiration of the agreement, the housing covered by the agreement shall be subject to any law then affecting low income affordability restrictions.

§ 248.251 Consultation with other interested parties.

The Commissioner will confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this part and will give consideration to the views of the State or local agency when making the determinations under §§ 248.221 and 248.233 of this part. The Commissioner also will confer with other interested parties that the Commissioner believes could assist in the development of a plan of action that best achieves the purposes of this part.

§ 248.261 Agreements implementing plans of action and State strategies.

The Commissioner is authorized to enter into agreements, including those for the provision of incentives, necessary to implement any plan of action or State strategy approved by the Commissioner under this part.

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

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AUTHORITY: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 45 FR 59796, Sept. 10, 1980, unless otherwise noted.

Subpart A—Purpose, Scope and Applicability

§ 250.1 Purpose.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act by adding a new section 244 entitled Coinsurance. Section 244, authorizes the Secretary of Housing and Urban Development to insure and make commitments to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible for insurance under such provision, pursuant to a coinsurance contract with a State Housing Agency. The State agency must be willing (1) to assume a percentage of any loss and (2) to carry out certain functions (subject to audit, exception, or review requirements) such as credit approvals, appraisals, inspections, property disposition or other functions for which the Secretary approves the agency.

(b) By placing some of the risks which HUD now assumes when insuring mortgages on approved State Housing Agencies, the coinsurance program could help to assure more careful initial evaluation of proposed projects by lenders who are willing to accept some, but not all, of the risk of mortgage lending for rental housing projects. It could also make feasible the assumption by lenders of the processing responsibilities for a mortgage insurance program and thereby reduce the time and staff required to approve applications for mortgage insurance.

(c) The Congress indicated its concern that in delegating mortgage insurance processing duties to lenders, physical inspections of new dwelling units be continued in accordance with the same standards used under the regular HUD mortgage insurance programs. In accordance with this concern, this part sets forth the Department's regulations describing a coinsurance program for mortgages on multifamily, rental housing underwritten by State Housing Agencies.

(d) The primary purpose of this program is for HUD to assume some of the risk for the multifamily loans made by State Housing Agencies and thereby to reduce the perceived risks

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to investors in the obligations of State Housing Agencies. This should increase the access of these agencies to capital markets. In recognition of the capabilities of State Housing Agencies, their successful operating histories, and their accountability to their individual State governments, these regulations vest the maximum amount of processing responsibilities with these agencies.

(e) To avoid unfair competition with the private lending industry and to maintain consistency with the public purpose concept of tax exempt financing the Department has limited this program to projects in which at least 20 percent of the units are subject to an allocation under the Section 8 Housing Assistance Payments Program or a similar Federal, State or local Program as determined by the Commissioner or to projects which are proposed in certain areas of political jurisdictions which meet the minimum standards of physical and economic distress for the Urban Development Action Grant Program as specified in § 570.452(b)(1) and (2) of this title. See § 250.6.

(f) Section 244 of the Act requires that a coinsured mortgage be "otherwise eligible" under other provisions of Title II of the Act. Sections 221(d)(3) and 221(d)(4) are the appropriate insuring authorities for coinsurance. Therefore, many regulations in the part are parallel to multifamily provisions of Part 221 of this title, substituting, as appropriate, "agency" for "Commissioner" as the entity responsible for reviews, consents, approvals, determinations and other acts or decisions relating to coinsured mortgages.

§ 250.2 Effect of implementation of program on the flow of mortage credit to older declining areas.

Insurance will continue to be available under this part only to the extent the Secretary has determined that the availability of insurance authorized by this part does not adversely affect the flow of mortgage credit to older, declining areas and to purchasers of older and lower cost housing.

[53 FR 8887, Mar. 18, 1988]

§ 250.3 Effect of availability of coinsurance.

No insurance authorized under any provision of the National Housing Act other than section 244 of that Act shall be withdrawn, denied or delayed by reason of the availability of insurance under the program authorized by this part.

§ 250.4 Utilization of existing multifamily insurance authorities.

(a) With respect to mortgages to be coinsured under this part, mortgage insurance will be provided under the authority granted in section 221(d)(3) or section 221(d)(4) of the National Housing Act and the regulations implementing those sections as set forth in this part.

(b) Insurance authorized by this part will not be available for mortgages on properties which are eligible to be fully insured pursuant to authority of section 223(e) of the National Housing Act.

§ 250.5 Limitation on HUD liability.

In no event shall HUD's financial obligations under this part exceed its participation in the coinsurance program. HUD's only financial obligation under this part is to the participating agencies in their role as mortgagees and coinsurers. HUD's financial responsibility does not run to any holder of obligations issued by an approved agency. The determination that a participating agency can meet its financial responsibilities to the buyers of its obligations or to other lenders is a responsibility of entities other than HUD. A disclaimer of this nature shall be included in all prospectuses for agency issues of obligations and any applications by agencies for loans used to finance projects which are insured under this part. Any changes to such disclaimer require prior written approval by the Commissioner.

§ 250.6 Eligible projects.

To be eligible for mortgage insurance under this part a project must be proposed for new construction or substantial rehabilitation and (a) at least twenty (20) percent of the dwelling units in the project must be subject to

an allocation of subsidy under the Section 8 Housing Assistance Payments Program or a similar Federal, State or local program as determined by the Commissioner, or a suitable successor Federal program as determined by the Commissioner, or (b) must be located in a Municipality or County or portion of a Municipality or County which meets the minimum standards of physical and economic distress for the Urban Development Action Grant Program as specified in § 570.452(b) (1) and (2) of this title. The criteria following paragraph (b) in this section should be used to achieve community neighborhood redevelopment objectives; the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income; or the revitalization of deteriorating and deteriorated neighborhoods to attract persons of higher income. Projects with dwelling units which are subject to an allocation of subsidy under the Section 8 Housing Assistance Payments Program must be processed and administered in accordance with Part 883 of this title including § 883.401(b) permitting Fast Track processing for projects initially selected under Part 880 or 881 of this title. Projects which are subject to a successor Federal subsidy program as determined by the Commissioner must be subject to the appropriate regulations for that program.

Subpart B—Coinsurance Contract Rights and Obligations

§ 250.101 Definitions.

(a) *"Commissioner"*—The Federal Housing Commissioner.

(b) *"Act"*—The National Housing Act, as amended.

(c) *"Mortgage"*—A first lien upon real estate and other property commonly given to secure advances on, or the unpaid balance of the purchase price of real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) *"Insured Mortgage"*—A mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) *"Contract of Coinsurance"*—The agreement between an approved agency and the Commissioner for the coinsurance of a mortgage which includes the terms, conditions and provisions specified in this part and the National Housing Act and is evidenced by the Commissioner's issuance of a mortgage insurance certificate.

(f) *"Mortgagor"*—Means the original borrower under a mortgage and, where appropriate in context, its successor and such of its assigns as are approved by the Commissioner.

(g) *"MIP"*—means the mortgage insurance premium paid by the agency to the Commissioner in consideration of the contract of coinsurance.

(h) *"State Housing Agency (Agency)"*—Any public body, agency, or instrumentality created by a specific act of a State legislature and empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation, for persons and families of low and moderate income. The term "State" shall include the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(i) *"Approved Agency"*—A State Housing Agency certified as eligible to underwrite mortgages for coinsurance as provided in § 250.202. The HUD Headquarters shall have sole responsibility for the certification of approved agencies pursuant to the requirements of this part.

(National Housing Act, secs. 9, 201, 203, 207, 220, 221; 12 U.S.C. 1706d, 1707, 1709, 1713, 1715k, 1715l; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

[45 FR 59796, Sept. 10, 1980, as amended at 49 FR 12698, Mar. 30, 1984]

§ 250.102 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage shall be on real estate held:

(1) In fee simple; or

(2) Under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such lease: *Provided,* That the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 407, Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983))

[45 FR 59796, Sept. 10, 1980, as amended at 50 FR 4648, Feb. 1, 1985]

§ 250.103 Development of property.

(a) *Obligation of the mortgagor.* The mortgagor shall be obligated to either construct and complete new housing accommodations on the mortgaged property or rehabilitate existing housing accommodations designed principally for residential use. The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

(b) *Minimum number of units.* A project shall consist of not less than five dwelling units.

§ 250.104 Commercial and community facilities.

(a) The project may include such commercial and community facilities as the agency and the Commissioner determine to be adequate and appropriate to serve the occupants.

(b) In the case of a project designed primarily for occupancy by the elderly or handicapped, the project may include central dining and other shared facilities as approved by the agency and the Commissioner.

§ 250.105 Form of construction contract.

(a) *In general.* The contract between the mortgagor and the general contractor to develop the property shall be in the form of either a lump sum contract or a cost-plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost-plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, which may include a fee to the builder in an amount allowed by the agency.

(b) *Lump sum contract.* A lump sum contract may be used where it is established to the satisfaction of the agency that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor, and where the mortgage is executed by a limited distribution or general mortgagor. A lump sum contract may also be used where the mortgage is executed by a cooperative mortgagor if the agency makes the foregoing determination as to the nonidentity of interest and it is established to the agency's satisfaction that a cost-plus form of contract is not required to protect its interests or the interests of the cooperative mortgagor.

(c) *Cost-plus contract.* A cost-plus contract shall be used in each of the following instances:

(1) Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(2) Where the mortgage is executed by a cooperative mortgagor and it is

determined by the agency that a cost-plus form of contract is required to protect the interests of the agency or mortgagor.

(3) Where the mortgage is executed by a nonprofit mortgagor, unless it is established to the agency's satisfaction that a cost-plus contract is not required to protect its interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

§ 250.106 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 250.107 Maximum mortgage amounts.

The mortgage shall involve a principal amount which does not exceed the maximum permitted under the section 221(d)(3) or section 221(d)(4) program, whichever is applicable; plus such reserves and development costs not to exceed 5 percent of the applicable amount, as may be established by the agency under its procedures and underwriting standards.

§ 250.108 Adjusted mortgage amount—rehabilitation projects.

A mortgage having a principal amount computed in compliance with this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property not subject to existing mortgage.* If the mortgagor owns the project free of an existing mortgage, the maximum mortgage amount shall not exceed 100 percent of the agency's estimate of the cost of the proposed repairs or rehabilitation.

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an existing mortgage, which is to be prepaid with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) *Nonprofit or cooperative mortgagor.* If the mortgagor is a nonprofit or cooperative, and the project is insured under section 221(d)(3) of the Act, the agency's estimate of the cost of the repairs or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation. In the case of projects insured under section 221(d)(4) the agency's estimate of the cost of the repairs or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90 percent of the agency's estimate of the value of such land and improvements prior to the repairs or rehabilitation.

(2) *General or limited distribution mortgagor.* If the mortgagor is a general or limited distribution mortgagor, the agency's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90 percent of the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) *Nonprofit or cooperative.* If the mortgagor is a nonprofit or cooperative, and the project is insured under section 221(d)(3) of the Act, the agency's estimate of the cost of the proposed repairs or rehabilitation plus the lesser of either of the following:

(i) The actual purchase price of the land and improvements.

(ii) The agency's estimate of the value of such land and improvements prior to the repair or rehabilitation. If the project is to be insured under section 221(d)(4) of the Act, 90 percent of the agency's estimate of the cost of the proposed repair or rehabilitation plus 90 percent of the lesser of the actual purchase price of the land and improvements or the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(2) *General or limited distribution mortgagor.* If the mortgagor is a general or limited distribution mortgagor:

(i) Ninety percent of the agency's estimate of the cost of the repair or rehabilitation, plus

(ii) Ninety percent of the lesser of the actual price of the land and im-

provements, or the agency's estimate of value of such land and improvements prior to the repair or rehabilitation.

§ 250.109 Covenant for hazard insurance.

The mortgage shall contain a covenant acceptable to the Commissioner and the agency binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner and the agency, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the agency and approved by the Commissioner at the time of completion of the entire project or units therefor. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the agency and the Commissioner as their interests may appear.

§ 250.110 Eligibility of title.

For the mortgaged property to be eligible for insurance, the agency must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the agency and the issuance of a mortgage insurance certificate by the Commissioner will be conditioned on certification by the agency of its acceptability. The agency shall assume all risks for any problems or title exceptions set forth in the title policy or other evidence of title, that it approves which are inconsistent with the requirement in § 250.101(c) that the mortgage be a first lien.

§ 250.111 Title evidence.

(a) Upon final closing of the mortgage loan by the agency, the mortgagor shall furnish to the agency a survey of the mortgaged property satisfactory to the agency and a policy of title insurance covering such property, as provided in paragraph (a)(1) of this section. If, for reasons the agency deems satisfactory, title insurance cannot be furnished, the mortgagor shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section, as the agency may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the agency. The types of title evidence are:

(1) A policy of title insurance issued by a title insurance company and in a form satisfactory to the agency. The policy shall name as the insured the agency and the mortgagor as their interests may appear. The policy shall provide that upon acquisition of title by the agency, it will become an owner's policy running to the agency.

(2) An abstract of title satisfactory to the agency, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the agency as to the quality of such title, signed by an attorney-at-law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of the title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project involving rehabilitation where the mortgage does not exceed $200,000.

(c) Regardless of the form of title evidence set forth in paragraph (a) (1), (2), (3) or (4) of this section, the agency shall certify that the title to the project reflects that the insured mortgage on the project is a first lien.

§ 250.112 Eligible mortgagors.

A mortgage shall only be executed by mortgagor meeting one of the following qualifications:

(a) *Nonprofit mortgagor.* The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the agency finds is in no manner controlled by, or

under the direction of, persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under Federal or State laws or by political subdivisions of States or agencies thereof, or the agency, as to rents, charges, and methods of operation.

(b) *Limited distribution mortgagor.* The limited distribution mortgagor may be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the agency) as to distribution of income and shall be regulated as to rents, charges, rates of return, and methods of operation.

(c) *Cooperative mortgagor.* The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation approved by the agency which restricts permanent occupancy of the project to the members of the corporation and which requires membership eligibility and transfers of membership in a manner approved by the agency. Such a mortgagor will be regulated or restricted by the agency as to rents or sales, charges, rate of return, and methods of operation.

(d) *General mortgagor.* A general mortgagor shall be any mortgagor approved by the agency, not meeting the eligibility requirements of paragraphs (a) through (c) of this section which, until the termination of all obligations of the agency and the Commissioner under the insurance contract and during such further period of time as the agency shall be the owner or holder of the mortgage, is regulated or restricted by the agency as to rents or sales, charges, capital structure, rate of return, and methods of operation.

§ 250.113 Regulation of mortgagors; Disclosure.

(a) The mortgagor and the agency may agree to such regulation and restriction of the actions of the mortgagor by the agency as they deem desirable; provided, that the requirements set forth in §§ 250.114, 250.115, 250.116, 250.117, 250.118 and 250.119 are met. Mortgagors of projects which have dwelling units which are subject to an allocation of subsidy under the Section 8 Housing Assistance Payments Program must also meet the requirements of Part 883 of this title. Mortgagors of projects with units which are subsidized under a successor Federal program as determined by the Commissioner, must meet appropriate regulatory requirements of that program.

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and vertification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[45 FR 59796, Sept. 10, 1980, as amended at 54 FR 39697, Sept. 27, 1989]

§ 250.114 Supervision applicable to all mortgagors.

(a) No charge shall be made by the mortgagor for accommodations, facilities, or services offered by the project except those approved in writing by the agency.

(b) The mortgagor shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the agency.

(c) In all projects a fund for replacements shall be established and maintained with the agency. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement. The replacement reserve provisions of § 883.703(a) of this title apply to Section 8 projects other than partially-assisted projects, as defined in § 883.302 of this title. The first and second sentences of this paragraph apply to partially-assisted projects and non-Section 8 projects.

(d) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the agency, the Commissioner, and the Comptroller General of the United States or their duly authorized agents at all reasonable times.

(e) The mortgagor shall execute and deliver to the agency a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the agency on the date the certificate is executed. So long as the mortgage is coinsured under this part, the mortgagor's books and accounts will be kept in accordance with the requirements of the agency; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribe by the agency; will be maintained for such periods of time as may be prescribed by the agency; and will be available to the agency, and to the Commissioner and to the Comptroller General of the United States for such examination and audit as they may desire to make. The mortgagor shall file with the agency the following reports verified by the signature of such officers of the mortgagor as the agency may designate and in such form as prescribed by the agency.

(1) Monthly occupancy reports as required by the agency.

(2) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the agency, certified to by an officer of the mortgagor and, when required by the agency, prepared and certified by a Certified Public Accountant, or other public accountant acceptable to the agency and the Commissioner.

(3) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the coinsured mortgage.

(4) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

(5) At the end of each calendar quarter the agency shall report to the Commissioner on any mortgagors encountering financial difficulties and on corrective actions being taken to alleviate such difficulties.

§ 250.115 Supervision applicable to general mortgagors.

General mortgagors may include mortgagors which under State law or rules are required to be limited or regulated as to rates of return or distribution of profits, but which are not required to be so limited or regulated under the provisions of Section 221(d)(4) of the Act if the mortgage is insured under that section. The following restrictions and regulations will be applicable to general mortgagors.

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the mortgagor and the agency prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity, beneficial certificates of interest, or, in the case of a partnership, participations therein may be issued in such amounts and form as may be agreed upon by the mortgagor and the agency.

(b) *Distribution of earnings.* Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after the payment of and segregation of such funds as determined by the applicable laws and procedures of the agency. Distributions may be made for projects which are assisted under Section 8, only in accordance with the provisions on limitation of distributions in § 883.306 (a) through (e) of this title. For small projects and partially-assisted projects as defined in § 883.302 of this title, the first two sentences of this paragraph shall apply.

(c) *Borrowed funds.* No distribution of any kind may be made from borrowed funds.

(d) *Rents and charges.* In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the

agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a reasonable return on the investment consistent with providing reasonable rentals to tenants.

§ 250.116 Supervision applicable to limited distribution mortgagors.

(a) *Rate of return.* The amount of any allowable distribution or disbursement from surplus cash generated by the mortgagor will not exceed in any one fiscal year more than six percent of the mortgagor's initial equity investment as is agreed to by the agency and the Commissioner. The right of allowable distribution or disbursement from surplus cash may be cumulative. Dividends or other distributions may be declared or made only as of or after the end of a semi-annual fiscal period. Distributions may be made for projects which are assisted under Section 8, only in accordance with the provisions on limitation on distributions in § 883.306 (a) through (e) of this title. For small projects and partially-assisted projects as defined in § 883.302 of this title, the first three sentences of this paragraph shall apply. No dividends or other distribution shall be declared or made except out of surplus cash and pursuant to applicable laws and procedures of the agency.

(b) *Rents and charges.* In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a rate of return on the investment not exceeding the rate limitation of paragraph (a) of this section, and consistent with providing reasonable rentals to tenants.

(c) *Borrowed funds.* No distribution of any kind may be made from borrowed funds.

§ 250.117 Supervision applicable to cooperative mortgagors.

(a) The mortgagor shall not permit occupancy except under an occupancy agreement or lease approved by the agency.

(b) Except with the prior written approval of the agency, no compensation shall be paid by the corporation to its officers or directors, as such, or to any persons or corporation for supervising or managerial service. No compensation shall be paid by the corporation to any employee in excess of an amount agreed to by the agency, and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation except on account of approved occupancy charges.

(c) A general operating reserve shall be established and maintained as long as the mortgage is coinsured under this part in a manner and for the purposes specified in the charter or regulatory agreement.

(d) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be disbursed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds. For projects which are assisted under Section 8, the provisions on the use of project funds contained in § 883.702(e) of this title shall apply.

§ 250.118 Required regulatory agreement with mortgagors.

(a) The agency and the mortgagor shall effect an agreement whereby the mortgagor, as further consideration for making of the mortgage loan, contracts with the agency and with the Commissioner that it will fulfill the applicable provisions of this subpart (§§ 250.113 through 250.119). Such regulation or restriction will be in the form of a regulatory agreement between the mortgagor and the agency which shall be responsible for enforcing the provisions of the regulatory agreement.

(b) Further, the agency may regulate and restrict the mortgagor, as long as the Commissioner and the

agency are coinsurers of the mortgage, on such other matters as may be required by the agency as conditions for lending which do not conflict with the requirements of the Commissioner under this part.

§ 250.119 Occupancy requirements applicable to all mortgagors.

(a) The mortgagor shall certify under oath to the agency that so long as the mortgage is coinsured under this part the mortgagor will not:

(1) In selecting tenants for the project covered by the mortgage, discriminate against any family because there are children in the family unless the project was designed expressly for occupancy by elderly or handicapped persons. Applicant preferences based on residency in the community may be used only to the extent they do not conflict with affirmative marketing objectives and the HUD approved Affirmative Marketing Plan.

(2) Rent, permit the rental or permit the offering for rental of housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certification, the term rental for transient or hotel purposes shall mean: (i) Rental for any period less than 30 days, or (ii) any rental, if the occupants of the housing accommodations are provided customary hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service.

(b) Preference for displacees. With respect to all dwelling units insured under this part, a preference or priority of opportunity to rent dwelling units shall be given by the mortgagor to families or single persons who have been displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

§ 250.120 Creation of the contract of coinsurance.

This part and the Act shall constitute the contract of coinsurance and the agency and the Commissioner shall be bound in accordance with this part and the Act with the same force and effect and to the same extent as if a separate contract has been executed. The contract of coinsurance shall be evidenced by the Commissioner's issuance of a mortgage insurance certificate.

§ 250.121 Mortgage form.

(a) The mortage shall be executed on the agency's form as approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) In the case of cooperative mortgagors, the mortgage shall provide that the mortgagor will not arrange for management of the property except in the manner and under an agreement approved by the agency and the Commissioner in writing.

§ 250.122 Mortgage lien.

A mortgagor shall certify at the final closing of the loan and the agency shall determine that:

(a) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the agency and the Commissioner. Liens other than the insured mortgage which may be approved (other than liens for taxes and assessements of the State or subdivisions of the State not yet due and payable, or ground rents) may not have, under applicable law, a priority equal or superior to the insured mortgage.

(b) There will not be outstanding any unpaid obligation contracted for in connection with the mortgage transaction, the purchase of the mortgage property, or the construction of the project, except obligations approved by the agency and the Commissioner. Obligations of the mortgagor shall be approved under this section only if such obligations are determined to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 250.123 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor. Interest

shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

(b) When an approved agency issues tax-exempt obligations under Section 103 of the Internal Revenue Code to fund a mortgage loan coinsured under this part, it must certify that, in setting the mortgage interest rate, when added to other fees and charges, the override does not exceed the arbitrage limitations of the U.S. Department of Treasury for such obligations.

(c) The amount of any increase approved by the agency and the Commissioner in the mortgage amount between the start of construction and final closing in excess of the amount that the agency and the Commissioner had committed to insure at the start of construction shall bear interest at the rate agreed upon by the mortgagor and the agency.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 404 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, approved Nov. 30, 1983)

[45 FR 59796, Sept. 10, 1980, as amended at 49 FR 19459, May 8, 1984]

§ 250.124 Maturity.

The mortgage shall have a maturity satisfactory to the agency, not in excess of 40 years from commencement of amortization or for such longer term as may be approved by the Commissioner.

§ 250.125 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the agency and the Commissioner.

(b) *Date of first payment to principal.* The agency shall estimate the time necessary to complete the project and shall establish pursuant to standards adopted by the agency the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than that deemed necessary and appropriate by the agency to obtain sustaining occupancy.

§ 250.126 Application of mortgage payments.

(a) The mortgage shall provide that all monthly payments being made by the mortgagor to the agency shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The agency shall apply all payments received from the mortgagor or for the account of the mortgagor to the following items in the order set forth:

(1) Premium charges under the contract of insurance, where applicable.

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) The mortgage shall provide for payments by the mortgagor to the agency on each interest payment date of an amount sufficient to accumulate in the hands of the agency one payment period prior to its due date, the next annual mortgage insurance premium. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(c) The mortgage shall provide for such equal monthly payments by the mortgagor to the agency as will pay the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become due. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 250.127 Prepayment privileges.

Where the mortgage is given to secure a loan made by an agency which has obtained the funds for such loan by the issuance and sale of obligations of the agency or from other

agency sources, the mortgage may contain a provision that the mortgage indebtedness may not be prepaid in whole or in part without the prior written consent of the agency and the Commissioner on a form or forms approved by the Commissioner. The consent of the agency to prepay the debt, in whole or in part, may be conditioned upon payment to the agency by the mortgagor of such fees and charges which are reasonable as determined by the Commissioner and which are related to the agency's cost of redeeming the obligations issued to finance the loan.

§ 250.128 Late charge.

The mortgage may provide for the collection by the agency of a late charge, not to exceed two cents for each dollar of each payment to interest and principal more than 15 days in arrears, or such other charges as may be agreed to by the agency and the mortgagor, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 250.129 Amount of mortgage insurance premium (MIP).

The agency's application for participation in the coinsurance program, shall state the percentage of risk to be assumed by HUD and the agency respectively. The percentage shall be one of the steps in the table in this Section. The percentage shall be the same for all projects financed by the agency under this part, unless the agency requests and the Commissioner approves a change. The MIP, for both first mortgages and operating loss loans, shall be one-half of one percent per annum of the average outstanding principal balance of the mortgage without regard to any delinquent payment or prepayment, multiplied by HUD's percentage of risk. The MIP is shown in the following table.

Percentage share of coinsurance risk		MIP, as percentage of principal balance per annum
HUD	Agency	
90	10	.45
80	20	.4
60	40	.3
50	50	.25
40	60	.2
20	80	.1
10	90	.05

The mortgagor shall pay the monies for the MIP in cash in advance, as set forth in § 250.126. The agency shall pay the MIP to HUD as set forth in § 250.130. An agency may charge and retain a premium with respect to the agency's share of risk, in the agency's discretion except as provided in this section. The agency's application for participation in the coinsurance program shall indicate the premium which the agency intends to change. The Commissioner shall require justification if the agency intends to charge more than the difference between one-half of one percent and the MIP. The Commissioner may not approve an agency premium which exceeds the difference between one percent and the MIP. The application for commitment, the commitment, the request for issuance of a mortgage insurance certificate and the mortgage insurance certificate shall state HUD's percentage share of risk, the MIP, and the premium, if any, with respect to the agency's share of risk. The Commissioner may require justification of an agency premium for a particular mortgage which is higher than indicated in the application for participation in the program. An agency may insure or reinsure its share of risk with any public or private insurer or agency, other than FHA.

§ 250.130 Annual payment of MIP on a level percentage of the declining principal balance.

With respect to first mortgages and operating loss loans, the agency shall pay in cash to the Commissioner, with the agency's request for issuance of a mortgage insurance certificate as evidence of the contract of coinsurance, a first mortgage insurance premium equal to the percentage set forth in

§ 250.129 of the face amount of the mortgage. On the date of the first principal payment, the agency shall pay to the Commissioner a second premium equal to the prescribed percentage of the average outstanding principal obligations of the mortgage for the year following such first principal payment date which shall be adjusted so that the aggregate of the said two premiums shall be equal to the prescribed percentage of the average outstanding principal obligation of the mortgage without taking into account delinquent payments or prepayments from the effective date of the coinsurance contract to one year following the date of the first principal payment. Until the mortgage is paid in full or until receipt by the Commissioner of an application for insurance benefits or until the contract of coinsurance is otherwise terminated with the consent of the Commissioner, the mortgagee on each anniversary of the date of the first principal payment, shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage for the year following the date on which the premium becomes payable. The premiums payable to the Commissioner on and after the date of the first principal payment shall be calculated in accordance with the amortization schedule issued in conjunction with final closing and the prescribed percentage as set forth in § 250.129 without taking into account delinquent payments or prepayments. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart. Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing.

§ 250.131 Duration of MIP.

The MIP required under § 250.130 shall continue annually in advance until the earliest date on which one of the following occurs:

(a) The mortgage is paid in full.

(b) A deed to the agency if filed for record, or

(c) The contract of coinsurance is terminated in accordance with § 250.407, § 250.408 or § 250.409.

§ 250.132 Applicability of prevailing wage requirements.

(a) *In general.* Prevailing wage requirements shall be applicable to a mortgage insured under this part, except those specified in paragraph (b) of this section, and compliance with such requirements shall be evidenced at such time and in such manner as the Commissioner may prescribe, as follows:

(1) *Labor standards.* Any contract, subcontract, or building loan agreement executed for the performance of construction or rehabilitation of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) *Ineligible contractors.* No construction or rehabilitation contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(b) *Excepted transactions.* The requirements of paragraph (a) of this section shall not be applicable to a project involving a cooperative where the agency and the Commissioner have waived the requirements and each of the following circumstances occurs.

(1) The laborers or mechanics not otherwise employed in the construction or rehabilitation of such project are to voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project.

(2) The mortgagor establishes to the satisfaction of the agency and the Commissioner that amounts saved by

the donated services will be credited to the account of the mortgagor.

[45 FR 59796, Sept. 10, 1980, as amended at 49 FR 45127, Nov. 15, 1984]

§ 250.133 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction or rehabilitation of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, sex, creed, or national origin. When the mortgagor is the general contractor, the building loan agreement shall contain the above provision.

§ 250.134 Environmental review.

The National Environmental Policy Act of 1969, as amended, is applicable to major Federal actions proposed pursuant to this part. The Secretary may make appropriate provisions for the delegation to a State agency of the preparation of any detailed statement required pursuant to section 102 of that statute. However, final responsibility for making determinations which are not delegable under the National Environmental Policy Act of 1969 has been retained by the Department of Housing and Urban Development.

§ 250.135 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the agency as to each of the following points:

(1) That neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny any part of the property covered by the mortgage to any person because of race, color, sex, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended on the date the mortgage was executed.

§ 250.136 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the mortgagee.

[53 FR 8887, Mar. 18, 1988]

Subpart C—Certification of Agencies for Approval

§ 250.201 Review and certification of agency.

Certification of a State Housing Agency as an approved agency, eligible to underwrite and service mortgages on multifamily projects for coinsurance, may be made only after a review of the agency's application for participation in the coinsurance program and an on-site review of the agency's operation by HUD. These reviews must cover the adequacy of the agency's technical staff, procedures for screening and processing applications for mortgage insurance, and the agency's capability to service such mortgages and supervise project management and the agency's ability to meet Federal fair housing and equal opportunity requirements with respect to processing of individual applications and project operations. Underwriting systems for approved agencies must conform to all Federal statutory requirements and any additional requirements which the Commissioner determines are in the best interest of the Secretary. Agencies shall promptly notify the Commissioner of any changes in their processing procedures which occur after their certification as an approved agency and shall rescind any such changes which the Commissioner determines are inconsistent with the requirements of this part.

§ 250.202 Withdrawal of approval.

The Commissioner may refrain from issuing a commitment for mortgage insurance authorized by this part with respect to any project proposed for coinsurance by an agency which has been given written notice by the Commissioner that its certification as an approved agency under this part may be suspended or withdrawn. Certification as an approved agency under this part may be suspended or withdrawn pursuant to the provisions of Part 24 of this title or for any of the following causes:

(a) Failure to maintain satisfactory capital funds or structure as related to mortgagee approval under § 203.1 of this title or failure to meet financial obligations under the coinsurance program.

(b) Failure to perform underwriting, servicing, or property disposition functions consistent with the requirements of this part.

(c) Failure to discharge responsibilities under a contract for coinsurance.

(d) Transfer of a coinsurance mortgage to any entity without the advance written approval of the Commissioner.

(e) Failure to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments, mortgage insurance premiums, and premiums for hazard insurance to deposit such funds into a special account or accounts.

(f) The use of escrow funds for any purpose other than that for which they were received.

(g) The payment by the agency of any fee, kickback or other consideration, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other consideration from the mortgagor, the seller, the builder, or any other persons for services related to such transaction or transactions or from or related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner.

(h) Withdrawal of approval as a mortgagee pursuant to § 25.9 of this title.

(i) Such other reasons as the Commissioner may determine.

[45 FR 59796, Sept. 10, 1980, as amended at 52 FR 3612, Feb. 5, 1987]

§ 250.203 Effect of withdrawal of certification as an approved agency on insurance commitments made while it was approved.

Withdrawal or termination or a State Housing Agency's certification as an approved agency under this part will not affect any mortgage insurance commitment issued while the agency was an approved agency or the insurance on mortgages accepted for insurance while the agency was an approved agency.

§ 250.204 Mortgage servicing during coinsurance period.

Servicing functions during the period when the Commissioner is a coinsurer of the mortgage shall be performed only by the agency, except that the agency may elect to delegate servicing to another entity acceptable to the Commissioner if the agency retains its obligations under this part.

Subpart D—Processing and Commitment

§ 250.301 Application.

The application for a commitment to make a coinsured mortgage on a project shall be submitted to the agency by the sponsor of such project, accompanied by such exhibits as may be required by the agency to enable the agency to comply with requirements for coinsurance of the mortgage established under this part and as may be required to meet any additional requirements of the agency which are not in conflict with HUD requirements.

§ 250.302 Processing.

(a) The agency shall perform all of the processing and make all of the determinations of the eligibility of a

mortgage for coinsurance under this part except for (1) the required determinations related to environmental impact which cannot be delegated under the National Environmental Policy Act of 1969, (2) those determinations related to previous participation in HUD housing programs of principals of the mortgagor, and (3) fair housing and equal opportunity determinations, all of which must be made by HUD. Upon completion of processing and satisfactory determinations by the agency and upon satisfactory determinations by HUD with respect to the above three disciplines, the agency may submit to the Commissioner a request for issuance of a commitment for mortgage insurance. The Agency must submit a certification with the request for a commitment that the mortgagor's application has been reviewed and approved in accordance with the underwriting procedures approved by the Commissioner. Any application shall be acted upon by the Commissioner and returned to the agency promptly. A commitment to insure, issued by the Commissioner, shall be based upon certifications made by the agency as to its compliance with the requirements of this part, section 244 of the Act and appropriate HUD Handbooks. A commitment to insure shall be effective for a designated term within which period the mortgagor is required to begin construction or rehabilitation. If construction or rehabilitation is begun as required, the commitment shall be extended for such additional period as determined by the agency, but in no event shall this period exceed the estimated time required for construction of the project plus six months. The commitment may be amended or further extended by the agency only with the prior written permission of the Commissioner. Any application for an extension or amendment shall be acted upon by the Commissioner and returned to the agency promptly. An expired commitment may be reopened if a request for reopening is received by the Commissioner from the agency within 90 days of the expiration of the commitment. Upon completion of construction or rehabilitation and receipt by the Commissioner of the agency's certification that the terms and conditions of the commitment for coinsurance have been satisfied, the Commissioner shall, promptly after receipt of the application, indicate his insurance of the mortgage by issuance of a mortgage insurance certificate which, among other things, identifies the section of the Act and the regulations under which the mortgage is insured, the percentage of risk assumed by the agency and the Commissioner, and which sets the date of insurance. The mortgage insurance certificate shall be effective as of the date the project mortgage loan is finally closed by the agency. All agency submissions must include certifications of compliance by the agency with such environmental, fair housing and equal opportunity and previous participation clearance requirements and procedures as may be established by HUD. Evidence that these requirements and procedures have been met shall be written HUD approvals in each of the three areas.

(b) For the first five commitments to insure issued by the Commissioner to any one agency, the agency must submit to the Commissioner the complete case file with the application and certifications so that he may ascertain that the agency is processing applications in full compliance with the requirements of the program.

(c) Projects with mortgages coinsured under this part for which Section 8 assistance has been requested must be processed in accordance with, and shall be subject to the provisions of Subpart D of Part 883 of this title. The application for coinsurance relating to a project to which subsidies are assigned under Part 883 of this title must be submitted prior to the start of construction as determined by the Commissioner and not later than the date on which the Housing Assistance Payments Agreement is submitted for approval.

(d) All requests for issuance of a mortgage insurance certificate must include a certification by the agency that all final closing requirements and conditions established by the Commissioner have been met.

§ 250.303 Financing and processing fees.

The agency may collect from the mortgagor such application fees, inspection fees, and initial service charges as it may require to be reimbursed for the cost of processing an application, conducting inspections and closing a mortgage transaction, provided the total of such fees and charges does not exceed the maximum amount allowable under the applicable full insurance program, i.e., sections 221(d)(3) or (d)(4) of the Act.

§ 250.304 Inspections during construction.

The inspection of construction projects covered by mortgages approved for coinsurance prior to the beginning of construction under this part shall be conducted in accordance with the standards and criteria set forth in Subpart S of Part 200 of this title and used with respect to dwellings or projects approved for mortgage insurance under the provisions of Title II of the Act other than section 244.

§ 250.305 Certification of cost requirements.

(a) Prior to endorsement of the mortgage for insurance, the agency shall enter into an agreement with the mortgagor in a form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract in a form meeting the requirements of § 250.105 of this part.

(2) To execute a certificate of actual construction costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over 90 percent of actual costs, unless the mortgagor is a nonprofit or cooperative entity utilizing the provisions of section 221(d)(3) of the Act, in which case 100 percent of such costs shall apply.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 250.306 Certificate as to subcontracts.

If it is determined by the agency that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in any subcontractor or material supplier of the general contractor, the mortgagor must certify to the agency prior to execution of a subcontract or a contract for the supply of materials that the amounts to be paid to such subcontractor or material supplier are not more than the rate prevailing in the locality for similar type labor and materials. If the determination of financial interest is made by the agency after the work is performed or materials supplied under such contracts, the certificate of the mortgagor shall be executed prior to issuance of a mortgage insurance certificate by the Commissioner.

§ 250.307 Requisites of agreement and certification.

Any agreement, undertaking, statement or certification required by § 250.305 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner, and may be relied upon by the Commissioner and the agency as a true statement of the facts contained therein.

§ 250.308 Records.

The mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and, in the case of a fixed fee contract, shall require the builder to keep similar records and, upon request by the agency, the Commissioner, or the General Accounting Office shall make available for examination such records including any collateral agreements.

§ 250.309 Certificate of actual cost—contents in general.

(a) *Submission of certificate.* The mortgagor's certificate of actual cost,

in a form approved by the Commissioner, shall be submitted prior to endorsement and upon completion of the improvements to the satisfaction of the agency.

(b) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(1) The cost-plus construction contract, including the builder's fee actually paid and approved by the agency; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(2) The architect's fee.

(3) The off-site public utilities and streets not included in paragraph (b)(1) of this section.

(4) The organizational and legal expenses.

(5) The other items of expense approved by the Commissioner.

(c) *Items not to be included.* The certificate shall not include as actual cost, any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or any of its officers, directors, stockholders or partners. Any such payments, if included, shall be deducted from the cost determined under paragraph (b) of this section.

(d) The Secretary hereby delegates to the agencies the authority to review and approve cost certifications for all projects covered by mortgages which are insured under this part.

§ 250.310 Certificate of actual cost—builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit or a cooperative mortgagor) an allowance for builder's and sponsor's profit and risk. The amount of the allowance shall be dependent upon a determination by the agency as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 250.309(b)(1). This allowance shall be 10 percent of the actual cost, or such lesser amount as may be determined by the Commissioner. Actual costs shall be computed in accordance with § 250.309, excluding the following items:

(1) Any builder's fee actually paid and approved by the agency. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of mortgage proceeds used to refinance any outstanding indebtedness on the property where the property involves the financing of repair or rehabilitation.

(c) *Non-identity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost or such lesser amount as the Commissioner shall specify, computed in accordance with § 250.309, excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the refinancing of repair or rehabilitation.

§ 250.311 Certificate of public accountant.

In all projects, the Certificate of Actual Cost shall be certified to accuracy by an independent Certified Public Accountant or licensed independent public accountant who was licensed on or before December 31, 1970 which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted audit standards to the extent deemed necessary to verify the actual costs and in accordance with the standards of the U.S. General Accounting Office.

§ 250.312 Certification of actual cost—land value.

Upon receipt of the mortgagor's certification of actual cost, there shall be added to the total amount thereof the agency's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to demolition and to construction of the proposed on-site improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost, provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

§ 250.313 Contractor's certification.

(a) *Certification by general contractor.* Where a cost-plus form of contract is used by a cooperative mortgagor or where any other type of mortgagor is required by the agency to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the general contractor, in a form approved by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) *Certification by subcontractors.* Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontractors, and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost-plus form of contract is required by the Commissioner or the agency, and it is determined by the agency that an identity of interest exists between the general contractor, any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner or the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 250.314 Reduction in mortgage amount—new construction.

If the principal obligation of the mortgage exceeds 90 percent of the total amount as shown by the certificate of actual cost plus the value of the land, the mortgage shall be reduced by the amount of such excess, subject to the 100 percent limitation set forth at § 250.305(a)(3).

§ 250.315 Reduction in mortgage amount—rehabilitation.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 250.309 and the applicable reduction in mortgage amount will be required; such mortgage shall also be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the agency, the amount of the existing mortgage or 90 percent, subject to the 100 percent limitation set forth at § 250.305(a)(3) of the agency's estimate of the fair market value of the land and existing improvements prior to repair and rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the

insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

(c) *Property to be acquired.* If the mortgage is to include the cost of the land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the agency's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds 90 percent, subject to the 100 percent limitation set forth at § 250.305(a)(3), the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

§ 250.316 Cost certification incontestable.

Upon the agency's approval of the mortgagor's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

§ 250.317 Loans to cover two year operating loss.

(a) *Operating loss determination.* When the agency determines that an operating loss has occurred during the first two full years following completion of the project, it may, in its discretion, make a loan to cover such loss which shall be eligible for insurance under this part. For purposes of this section, an operating loss shall occur when the agency determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located. A provision requiring full prepayment of the operating loss loan in the event the coinsured first mortgage is prepaid prior to maturity, must be included.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the agency and the mortgagor, but in no case shall such rate exceed the percentage per annum currently permitted on the date the commitment is issued for mortgages insured under the section of the Act under which the loan is to be insured. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maximum maturity.* The loan shall be limited to a term not exceeding the unexpired term of the mortgage.

(e) *Default.* In the event of a failure of the borrower to make any payment due under such loan or under the original mortgage, both the loan and the original mortgage shall be considered in default and if such default continues for a period of thirty days, the agency shall be entitled to insurance benefits computed in the same manner as for the original mortgage.

(f) *Terminations.* In the event that coinsurance of the first mortgage is terminated pursuant to § 250.407, § 250.408 or § 250.409, coinsurance of the operating loss loan shall also be terminated.

Subpart E—Defaults Under a Mortgage

§ 250.401 Definition of default.

The following shall be considered a default under this subpart:

(a) Failure of the mortgagor to make any payment due under the mortgage;

(b) Failure of the mortgagor to perform any other convenant under the provisions of the mortgage, if the agency, because of such failure has accelerated the debt; or

(c) In the case of an operating loss loan, the failure of the mortgagor to make any payments due under such loan or under the original mortgage, which shall be considered a default under both the loan and the original mortgage.

§ 250.402 Date of default.

For the purpose of this subpart, the date of default shall be considered as 30 days after:

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) The first failure to make a monthly payment which is not covered by subsequent payments made by the mortgagor when such subsequent payments are applied to the overdue monthly payments in the order in which they became due.

§ 250.403 Notice of default and intent to file an insurance claim.

The agency shall, within 30 days after the date of default, give written notice thereof to the Commissioner on a form prescribed by him, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured. Within 60 days of the date of default, unless cured, the agency shall give HUD notice of its intent to acquire title and to file an insurance claim.

§ 250.404 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred. The mortgagor shall pay to the agency such expenses as the agency has incurred in connection with the foreclosure proceedings and the agency shall give written notice of reinstatement to the Commissioner.

§ 250.405 Forbearance relief.

(a) Where the mortgage is in default, the agency and mortgagor, with the written approval of the Commissioner, may enter into a forbearance agreement for the reduction or suspension of regular mortgage payments for a specified time, not to exceed one year. The forbearance agreement may provide for the treatment of any arrears existing at the time it is made. The Commissioner's approval shall be based on the agency's determination and the Commissioner's concurrence that the default is due to circumstances beyond the control of the mortgagor, and that the mortgage will probably be restored to good standing within a reasonable period of time. The forbearance agreement may impose any lawful restrictions or obligations upon the mortgagor, and shall prohibit any dividends or other distributions to the owner from project revenues until the mortgage is restored to good standing. The forbearance agreement shall provide for status reports by the agency to the Commissioner until the mortgage is restored to good standing.

(b) A forbearance agreement does not cure a default, but the notice and reporting provisions of § 250.403 shall apply to any further default under the forbearance agreement.

§ 250.406 Advances to the agency.

(a) In conjunction with a forbearance agreement, the Commissioner may at his option agree with the agency to make advance payments to the agency to assist the agency in meeting debt service on its bonds issued to finance the mortgage. The amount and timing of the payments shall be as agreed, but a payment with respect to any month may not exceed 0.80 times HUD's percentage of coinsurance risk times the amount of the mortgage payment shortfall for that month.

(b) The agency's obligation to repay or credit the amount of advances shall be evidenced by a note payable by the agency to the Commissioner for each advance, bearing interest at an agreed rate.

(c) The note shall also provide that:

(1) If the agency makes a claim for insurance benefits on account of a loss sustained with respect to a mortgage which has been the subject of a forbearance agreement, the Commissioner will reduce that claim by the amount of any advances made on account of that mortgage (pursuant to that agreement) which have not been repaid plus the accrued interest.

(2) If the default in a mortgage is cured, the agency will repay the advance plus interest to the Commissioner over a period of time not to exceed the remaining term of the mortgage.

(3) Any payments made by a mortgagor under a forbearance agreement to bring a mortgage which has been the subject of an advance or advances into good standing will be applied first to

arrears due the agency (after taking account of the advances), and then to the repayment by the agency of the advances, until they are repaid with interest in full.

(4) If the contract of coinsurance for the mortgage on which the advance was made is terminated in accordance with §§ 250.408 through 250.410, the advance will be repaid by the agency in cash within 30 days after termination.

TERMINATION

§ 250.407 Termination of contract of coinsurance.

The contract of coinsurance for each individual mortgage shall be terminated if:

(a) The mortgage is paid in full.

(b) The agency acquires the mortgaged property and notifies the Commissioner that no claim for insurance benefits will be made;

(c) After completion of foreclosure proceedings the property is redeemed by payment of the total outstanding mortgage indebtedness in full;

(d) The property is acquired at foreclosure sale by a party other than the agency;

(e) The mortgagor and agency jointly request termination and that request is approved by the Commissioner; or

(f) The mortgage is transferred to another entity without the prior written approval of the Commissioner.

§ 250.408 Termination of contract of coinsurance by prepayment and voluntary termination.

All rights under the contract of coinsurance and all obligations to pay future insurance premiums shall terminate on the following conditions:

(a) Termination by prepayment: Notice of the prepayment in full of the mortgage or loan shall be given to the Commissioner on a form prescribed by the Commissioner within 30 days from the date of prepayment. The contract of coinsurance shall terminate effective as of the date of prepayment.

(b) Termination by voluntary agreement: Receipt by the Commissioner of a written request by the agency on a form prescribed by the Commissioner accompanied by the original mortgage insurance certificate for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

(c) Upon termination of the mortgage or loan contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the agency for the account of the mortgagor an amount equal to the pro rata portion of the prescribed percentage of the current annual mortgage insurance premium which is applicable to (1) the date of the prepayment, or (2) the effective date of the voluntary termination of the contract of coinsurance.

§ 250.409 Termination of contract of coinsurance for other reasons.

(a) *Reason for terminations.* The happening of any of the following events shall constitute an additional reason for terminating the contract of coinsurance in cases where the mortgagee has elected to file a claim for insurance benefits:

(1) The agency acquires the mortgaged property and notifies the Commissioner that no claim for insurance benefits will be made,

(2) The acquisition of the property at the foreclosure sale by a party other than the mortgagee,

(3) The redemption of the property after foreclosure,

(4) The mortgagor and agency jointly request termination and that request is approved by the Commissioner,

(5) The mortgage is transferred to another entity without the prior written consent of the Commissioner, or

(6) The mortgage is paid in full prior to or at maturity.

(b) *Notice of termination.* No contract of coinsurance shall be terminated by the agency until the agency has given written notice thereof to the Commissioner within 30 days from the happening of any one of the events set forth in paragraph (a) of this section occur.

(c) *Effective termination date.* The Commissioner shall notify the agency that the contract of coinsurance has been terminated and the effective termination date. The termination shall be effective as of the date any one of the events set forth in paragraph (a) of this section occur.

(d) *Effect of termination.* Upon termination of the contract of coinsurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and agency shall be terminated.

Claim Procedure

§ 250.410 Acquisition of property.

Within 30 days after the agency has given written notice to the Commissioner of its election to acquire title and to file an insurance claim pursuant to § 250.403 of this part, the agency shall (if no other eligible entity has assumed the obligations of the mortgagor) either (a) commence foreclosure of the mortgage; or (b) acquire possession of and title to the mortgaged property by means other than foreclosure. If the laws of the state where the property is located do not permit the commencement of foreclosure action within such 30 day period, foreclosure shall be commenced within 30 days of the date such action can be taken.

§ 250.411 Deed in lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the agency may acquire the property by voluntary conveyance from the mortgagor. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(a) The mortgagor is in default at the time the deed is executed and delivered;

(b) If there is a non-recourse instrument, it shall be cancelled and surrendered to the mortgagor. If there is a recourse or guarantee instrument, the agency may seek realization under the instrument or guaranty and any funds realized shall be shared by HUD and the agency in direct proportion to the coinsured risk.

(c) The mortgage is satisfied on record as a part of the consideration for such conveyance; and

(d) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title.

§ 250.412 Filing of initial claim.

Within 30 days following the date on which the agency acquires legal title to the property, (not subject to divestment by redemption), it shall give written notice to the Commissioner of the acquisition of legal title and shall submit its application for payment of initial insurance benefits.

Payment of Insurance Benefits

§ 250.413 Method of payment.

Payment of all insurance claims shall be made in cash from the General Insurance Fund unless the agency files a written request for payment in debentures.

§ 250.414 Amount of payment.

(a) Initial payment of a claim shall be in an amount equal to the percentage of risk assumed by HUD in accordance with § 250.129 and as indicated in the commitment and mortgage insurance certificate multiplied by 75 percent of the difference between the unpaid principal balance of the mortgage on the date of the institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default and the appraised value of the property obtained in accordance with § 250.415(a). If the appraised value exceeds the unpaid principal balance, there shall be no initial payment of insurance benefits.

(b) Within 45 days following the earlier of disposition of the property or expiration of twelve (12) months from the date of acquisition of the property, the agency shall file a claim for the final payment of insurance benefits. Such payment shall be in an amount which, when added to the amount of the initial payment computed pursuant to paragraph (a) of this section will equal the total amount of insurance benefits computed pursuant to

paragraph (d) of this section. If the total benefits exceed the initial payment, the Commissioner will make a payment to the agency for the difference. If the initial payment exceeds the total benefits, the Commissioner will bill the agency for the difference. If the initial payment equals the total benefits, neither payment nor a bill will be sent to the agency.

(c) The base amount for the computation of total insurance benefits shall be the sum of the unpaid principal balance of the mortgage on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, plus the sum of all of the items set forth in § 250.416, less the sum of all of the items set forth in § 250.417.

(d) The total amount of insurance benefits shall be equal to the percentage of risk assumed by HUD as cited in paragraph (a) of this section multiplied by the base amount computed pursuant to paragraph (c) of this section, such product to be reduced by any balance of principal and/or interest due on a note from the agency on a defaulted mortgage pursuant to § 250.406. In no case, however, may the total amount of insurance benefits exceed the Commissioner's share of coinsurance liability times the total of the outstanding principal balance at the time of default, plus the items added to principal pursuant to § 250.416, less the items deducted from principal pursuant to § 250.417.

§ 250.415 Disposition of property.

(a) Upon the acquisition of title to the property securing a defaulted mortgage in accordance with § 250.410 the agency shall obtain an appraisal of the property by an independent appraiser selected by the agency and approved by the Commissioner. The apprisal shall reflect the market value of the property, as of the date of acquisition, for use for the market originally intended.

(b) Within 45 days after the date on which the agency sells the property, or after the expiration of 12 months from the date the agency acquires legal title to the property, whichever comes first, the agency shall file a claim for the final payment of insurance benefits, pursuant to § 250.414(b).

(c) The claim for the final payment of insurance benefits shall be on a form approved by the Commissioner and shall give notice of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair, operation and sale of the property, and shall assign to the Commissioner, without recourse or warranty, any and all claims (other than the mortgage financing such sale) which the agency has acquired in connection with the transaction.

(d) If disposition of the property has not occurred by the date of the agency's claim for final payment, the agency shall utilize, in preparing such claim, the appraised value of the property obtained pursuant to paragraph (a) of this section, in lieu of the net sale proceeds required by § 250.417(f).

§ 250.416 Items added to principal in computing claim payment.

The sum of the following items shall be added to the unpaid mortgage principal in computing the base amount for the computation of insurance benefits, pursuant to § 250.414(c).

(a) The amount of all payments made by the agency for taxes, special assessments and water rates which are liens prior to the mortgae; for fire and hazard insurance on the property; and for any mortgage insurance premiums paid after default.

(b) For cash settlements, an amount equivalent to debenture interest at the rate established pursuant to § 250.418 on the principal of the mortgage unpaid on the date of the institution of foreclosure proceedings or on the date of the acquisition of the property otherwise after default, from the date of default to the date of acquisition of title; except that debenture interest shall not be payable for any period for which the agency receives mortgage interest during a forbearance agreement as provided in paragraph (c) of this section. If the agency fails to meet the requirements of §§ 250.403, 250.410, 250.412 or 250.415(b) within the specified time or within such further time as the Commissioner may

approve in writing, the interest allowance in such cash payment shall be computed only to the date on which the required actions should have been taken.

(c) The amount of the unpaid mortgage interest computed from the date of default to the date of acquisition of title in those cases where a forbearance agreement in accordance with § 250.405 has been executed.

(d) For cash settlements, an amount equivalent to mortgage interest on the difference between the principal of the mortgage unpaid on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, and the amount included in the initial payment of insurance benefits made pursuant to § 250.414(a) from the date of acquisition of title to the date of final payment of insurance benefits. Except that when the agency fails to meet the requirements of § 250.415(b) within the specified time, or within such further time as the Commissioner may approve in writing, the interest allowance on such cash payment shall be computed only to the date on which the required action should have been taken.

(e) Foreclosure costs or costs of acquiring the property otherwise actually paid by the agency and approved by the Commissioner, in an amount not in excess of two-thirds of such costs.

(f) Reasonable payments made by the agency for:

(1) Preservation, operation, and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD Minimum Property Standards, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner; and

(3) Expenses in connection with the sale of the property.

§ 250.417 Claim payment deductions.

The sum of the following items shall be deducted from the sum of the unpaid mortgage principal and any items added pursuant to § 250.416 of this part in computing the base amount for the computation of insurance benefits; pursuant to § 250.414(c).

(a) All amounts received by the agency on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All cash held by the agency or its agent or to which it is entitled, including deposits made for the account of the mortgagor.

(c) All funds held by the agency for the account of the mortgagor received pursuant to any other agreement.

(d) The amount of any undrawn balance under a letter of credit accepted by the agency in lieu of a cash deposit for an escrow agreement.

(e) Any net income received by the agency from the property securing the mortgage after the date of default.

(f) The net proceeds from the sale of the project, except that if the agency sells the project for an amount less than the appraised value on a negotiated sale the amount to be deducted will be the appraised value. If the property is sold on the basis of a competitive bidding procedure approved by the Commissioner, the net sale proceeds will be deducted, notwithstanding that it is lower than the appraised value. If the property has not been disposed of within 12 months from the date of acquisition, the agency shall substitute the appraised value of the property for the net sale proceeds in preparing the claim for final payment of insurance benefits, pursuant to § 250.415(d).

§ 250.418 Debentures.

All of the provisions of § 207.259(e) of this title shall apply to mortgages coinsured under this part.

§ 250.419 Rights in housing fund.

Neither the agency nor the mortgagor shall have any vested or other right in the General Insurance Fund.

Amendments

§ 250.420 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests

of an agency under the contract of coinsurance on any mortgage already coinsured and shall not adversely affect the interest of an agency on any mortgage to be coinsured on which the Commissioner has made a commitment to insure.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

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AUTHORITY: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 51 FR 13142, Apr. 17, 1986, unless otherwise noted.

Subpart A—General Provisions

§ 251.1 Purpose and scope.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approved lender (1) assist assume a percentage of any loss and (2) carry out (subject to monitoring) underwriting, commitment, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under coinsurance will reduce processing time and HUD staff burden, and increase lender involvement in all phases of the HUD Mortgage insurance process.

(c) This part provides for the coinsurance of Mortgages under section 221(d)(3) or section 221(d)(4) of the Act, which cover multifamily projects to be newly constructed or substantially rehabilitated.

(d) No full insurance authorized under any provision of the Act will be withdrawn, denied, or delayed because of the availability of coinsurance under this part.

(e)(1) If the Commissioner determines that coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods or to purchasers of older and lower cost housing, the Commissioner will discontinue the program after due notice. In such a case, no further coinsurance applications will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the housing or Mortgage market in a market area or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue insurance activities in such area after due notice.

(f) Neither the coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

[51 FR 13142, Apr. 17, 1986, as amended at 53 FR 8887, Mar. 18, 1988]

§ 251.2 Coinsurance contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commis-

sioner's authorized Departmental representative, and includes the terms, conditions and provisions of this part.

§ 251.3 Definitions.

(a) "Builder's and Sponsor's Profit and Risk Allowance" (BSPRAP) is an amount included in replacement cost where an identity of interest, as defined by the Commissioner, exists between the Mortgager and general contractor. The amount is a percentage of the total estimated cost of on-site land improvements; structures; general requirements; general overhead expenses; architect's fees; carrying and financing charges; and legal, organizational and audit expenses. The appropriate percentage to be applied is established by the Commissioner and may not exceed 10 percent.

(b) "Builder-seller Mortgagor" means an entity organized:

(1) To construct or rehabilitate a project and that, by written agreement with a Nonprofit Mortgagor, will sell the project (at final endorsement) to the Nonprofit Mortgagor at a purchase price not exceeding the certified cost of the project under § 251.404;

(2) To operate the project (subject to regulation by the lender) in accordance with requirements of the Commissioner, until sold to the Nonprofit Mortgagor; and

(3) To operate the project, if it is not sold within two years to a Nonprofit Mortgagor, as a Limited Distribution Mortgagor.

(c) "Coinsured Mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by endorsement of the Mortgage note by the Commissioner or by the Commissioner's authorized departmental representative.

(d) "Cooperative Mortgagor" means a nonprofit cooperative ownership housing corporation, regulated by the lender under a regulatory agreement, that restricts permanent occupancy of the project to members of the corporation, and requires membership eligibility and transfer of membership in a manner approved by the Commissioner.

(e) "Distribution" means the w drawal of any cash or asset of project excluding outlays for:

(1) Mortgage payments;

(2) Reasonable expenses neces for the proper operation and mai nance of the project; and

(3) Repayment of advances from owner, when such repayments are thorized by the Commissioner.

(f) "Firm Commitment" means commitment from the lender to Mortgagor that contain final deter nations by the lender of the maxim insurable Mortgage based upon c plete working drawings and specif tions and cost estimates, prepared manner specified by the Commissi er. The firm Commitment may not issued for longer than 60 days, which time the project must be init ly endorsed (insurance of adva cases) or construction started (ins ance upon completion cases). T Firm Commitment may be extend by the lender as provided § 251.302(c) of this part.

(g) "General Mortgagor" means a Mortgagor approved by the lend that does not meet any of the defi tions in paragraph (b), (d), (h), (i) (m) of this section and that is regul ed by the lender by means of a regu tory agreement.

(h) "Investor-sponsor Mortgag means an entity organized in the sa manner as a Builder-seller Mortga and subject to the same restrictio except that the project will be sold a Cooperative Mortgagor rather th a Nonprofit Mortgagor.

(i) "Limited Distribution Mortgag means an entity restricted by Feder or State law, and by the lender means of a regulatory agreement, as its rate of return and other aspects its operation.

(j) "Mortgage" means a first lien real estate and other property co monly given to secure either advanc on real estate or the unpaid balance the purchase price of real estate und the laws of the jurisdiction in whi the real estate is located. "Mortgag includes any credit instrument(s) s cured by the real estate.

(k) "Mortgagor" means the origin borrower under a Mortgage and

successors, and any assigns approved by the Commissioner.

(l) "Mortgage Insurance Premium" (MIP) means the Mortgage Insurance Premium collected under §§ 251.801 and 251.802 of this part.

(m) "Nonprofit Mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operation of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(n) "Residual Receipts" means (1) for projects owned by Nonprofit Mortgagors, all Surplus Cash and (2) for projects owned by Limited Distribution Mortgagors, any Surplus Cash remaining after allowable Distributions have been made or funds have been set aside for their payment.

(o) "Sound Capital Resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as its net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound Capital Resources may include (up to the limit specified in § 251.102(b)(2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than $100,000,000. For purpose of determining Sound Capital Resources, a loss reserve established to cover coinsurance liability under this part that is treated as a liability in the lender's balance sheets may be deemed a capital item rather than a liability.

(p) "Sponsor's Profit and Risk Allowance" (SPRA) is an amount included in replacement cost where no identity of interest, as defined by the Commissioner, exists between the general contractor and Mortgagor. The amount is a percentage of the sum of the architect's fee; carrying and financing charges; and legal, organizational and audit expenses. The appropriate percentage is established by the Commissioner and may not exceed 10 percent.

(q) "Substantial Rehabilitation" consists of repairs, replacements, and improvements:

(1) The cost of which exceeds the greater of:

(i) 15 percent of the property's value after completion of all repairs, replacements, and improvements, or

(ii) $6,500 per dwelling unit (adjusted by any applicable high-cost area factor under § 251.203(a)), or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term "major building component" includes:

(i) Roof structures,

(ii) Ceiling, wall, or floor structures,

(iii) Foundations,

(iv) Plumbing systems,

(v) Heating and air conditioning systems, or

(vi) Electrical systems.

(r) "Surplus Cash" means any unrestricted cash remaining after:

(1) The payment of: (i) All sums due or currently required to be paid under the terms of any Mortgage or note coinsured by the Commissioner;

(ii) All amounts required to be deposited in any replacement or operating reserve; and

(iii) All other obligations of the project other than the coinsured mortgage unless funds for payment are set aside, or deferral of payment has been approved by the lender; and

(2) The segregation and recording of an amount equal to: (i) The aggregate of any special funds required to be maintained by the project; and

(ii) The project's total liability for tenant security deposits.

In Computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

§ 251.4 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments will not adversely affect the interests of a lender under a Contract of Coinsurance on any Mortgage already coinsured or on any Mortgage to be coinsured on which the lender has already issued a firm commitment to insure, provided the

Mortgage is initially endorsed (insurance of advances) or construction starts (insurance upon completion) within 60 days after issuance of the Firm Commitment. The 60 days will run from the date of the original issuance of the Firm Commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment of the regulation.

Subpart B—Lender Requirements

§ 251.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6, or § 203.7(c), and (b) meets the requirements of § 251.102.

[52 FR 3612, Feb. 5, 1987]

§ 251.102 Review and approval as coinsuring lender.

The Commissioner will review an applicant lender's technical staff and procedures before granting approval as a coinsuring lender under this part. This review, including an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, Mortgage servicing, and disposition functions.

(a) A fee of $5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has the necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than $1,500,000, including liquid funds of at least $500,000. An unconditional and irrevocable firm letter of credit of not more than $500,000 from a supervised financial institution with assets of not less than $100,000,000 may be used to meet up to $500,000 of this Sound Capital Resources requirement and up to $500,000 of the included liquidity requirement. The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement and an additional one dollar of Sound Capital Resources for each 300 dollars of outstanding principal indebtedness on Mortgages it has coinsured under this part.

(3) Evidence acceptable to the Commissioner that the lender has the operating procedures, internal management controls, and technical staff (under contract or in its own employ) necessary to discharge full Mortgage underwriting, development, servicing, management oversight, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions. It must agree to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(4) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(5) A statement agreeing to file annual audits similar to those described in paragraph (a)(4) of this section and annual reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(6) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial and other records of the lender.

(7) A statement agreeing to comply with the provisions of title VIII of the Civil Rights Act of 1968, as amended, the Equal Credit Opportunity Act, Executive Order 11063, other Federal laws and all regulations issued under these authorities with respect to the lending, investing, or coinsuring of funds in real estate Mortgages.

(8) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 251.105.

(9) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing its functions under this part.

(10) A statement agreeing to notify HUD immediately whenever the lender's Sound Capital Resources fall below the level required by paragraph (a)(2) of this section. In addition, the lender must agree that it will request and receive approval from HUD before implementing any voluntary transfer or series of tranfers of the lender's assets which would cause the lender's Sound Capital Resources to fall below the required level. Finally, the lender must agree that if such transfer does take place without prior HUD approval, the remaining assets of the lender and any assets disbursed without such approval will be deemed to be held in trust for the benefit of HUD, and consequently, HUD would have a cause of action against any of the original principals of the lender or any other party for any transfer not made in accordance with these requirements.

(The information collection requirements contained in paragraphs (b)(2), (b)(3) and (b)(4) were approved by the Office of Management and Budget under control number 2502-0273)

§ 251.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinsure under this part. A temporary lapse in this authority will not terminate the lender's approved coinsurer status or affect outstanding Firm Commitments or coinsurance in force. However, lenders may not, during such lapse, issue or amend commitments or reopen expired commitments.

(b) Suspension or withdrawal of approval under § 251.104.

§ 254.104 Probation, suspension or withdrawal.

(a) A coinsuring lender may be placed on probation, be temporarily suspended, or have its approval as a coinsuring lender withdrawn by the Commissioner, or designee, for any of the following causes:

(1) Failure to maintain satisfactory Sound Capital Resources.

(2) Failure to operate the program in a prudent manner or to discharge its responsibilities under any regulatory agreement, coinsurance contract, or administrative procedures issued by the Commissioner under this part.

(3) Payment or receipt, by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to or from any person who has received any consideration from another person for services related to the transaction: however, compensation may be paid for the actual performance of services approved by the Commissioner.

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect.

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan.

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender.

(7) Any other cause determined by the Commissioner or designee to be appropriate.

(b) HUD may place a mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the coinsurance program. During the probation period the mortgagee may continue to issue commitments for insurance, subject to conditions required by HUD. Such conditions may include, but are not limited to, submission of the process-

ing to HUD for its approval before issuance of the commitment.

(c) Coinsuring lenders will be notified in writing by the Commissioner, or designee, when a probation, suspension or withdrawal action it taken. The notice will specifically state the cause, effect, and duration of the action. Lenders must comply with the conditions of the notice immediately, but may request an informal hearing on the action within 10 working days of receipt of the notice. The hearing shall be held by the Commissioner or designee. The lender shall be given the opportunity to be heard within 10 days of receipt of the request and may be represented by counsel. The Commissioner or designee will notify the lender in writing of the results of the hearing within 10 working days of the hearing and receipt of any materials. A decision to withdraw, suspend, or continue probation following a hearing constitutes final agency action.

(d) Probation, withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or commitments in effect at the time of the probation, withdrawal or suspension of approval.

(e) Serious misconduct or noncompliance with the requirements of the coinsurance program may also result in action against coinsuring lenders in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

§ 251.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages as long as the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6, or § 203.7(c) of this chapter and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may require the lender to cancel the servicing arrangement after giving the lender a 30-day written notice.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under control number 2502–0332)

[51 FR 13142, Apr. 17, 1987, as amended at 52 FR 3612, Apr. 17, 1987]

§ 251.106 Assignment of and participation in coinsured mortgages.

(a) *Assignment of coinsured mortgage.* (1) A lender may assign a coinsured mortgage to another lender if the following requirements are satisfied:

(i) The assignee is a HUD-approved coinsuring lender;

(ii) The lender shows good cause for the assignment;

(iii) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to HUD; and

(iv) The Commissioner gives prior written approval for the assignment and any risk allocation between assignor and assignee.

(2) The lender must inform HUD promptly following the assignment of any coinsured mortgage. The lender will not be relieved of its obligation to pay Mortgage Insurance Premiums until HUD has received this notice.

(b) *Transfer of partial interest under participation agreement.* A partial interest in a coinsured mortgage or pool of coinsured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the coinsured mortgage or mortgages shall be held by an approved coinsuring lender, which shall for purposes of this paragraph (b), be referred to as the principal lender;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(i) The principal lender shall remain the lender of record under the contract of coinsurance;

(ii) The Commissioner shall have no obligation to recognize or do business with anyone other than the principal lender with respect to the rights, benefits and obligations of the lender under the contract of coinsurance; and

(iii) The mortgagor shall have no obligation to recognize or do business with anyone other than the principal lender or its servicing agent with respect to the rights, benefits and obligations of the mortgagor or the lender under the coinsured mortgage; and

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose:

(i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgages;

(ii) Whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and

(iii) That no insurance fund administered by HUD will pay benefits to protect against any risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(c) *Government National Mortgage Association requirements.* (1) If the Coinsured Mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

(Approved by the Office of Management and Budget under control number 2502-0331)

[51 FR 28702, Aug. 11, 1986]

§ 251.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular project. Reinsurance may be obtained for:

(1) 50 percent of its risk;

(2) 100 percent of its risk; or

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure.

(b) The effect of reinsurance on the insurance benefits payable by the Commissioner is covered in § 251.820.

(c) Subject to the ceilings provided in § 251.823, any reinsurance policy must name the Commissioner as contingent beneficiary in the event that default by the lender compels the Commissioner to reimburse the Government National Mortgage Association for the amount that the Association had to pay securities holders as a result of the lender's default.

§ 251.108 Pledging and other security arrangements.

A lender may pledge, subject to standards established by the Commissioner, the beneficial interests in a Coinsured Mortgage as security pursuant to the terms of a reinsurance contract, trust indenture, third party guarantee agreement, or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions:

(a) The lender must retain legal title to the note and the Mortgage subject to the security interest created, unless the title is otherwise transferred in accordance with § 251.106. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record or any approved successor to the lender's title to the Mortgage and Mortgage note with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage or with another person or entity servicing the Mortgage loan under

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§ 251.105, except that the Mortgagor may be directed to make payments under the Mortgage to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interests of Coinsured Mortgages backing Government National Mortgage Association (GNMA) construction or Project Loan Certificates except as authorized by GNMA.

§ 251.109 Minimum principal loan amount.

A lender may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

[53 FR 8887, Mar. 18, 1988]

Subpart C—Program Requirements

§ 251.201 Eligible project.

(a) Projects to be newly constructed or substantially rehabilitated are eligible under this part. A project:

(1) Must have five or more units;

(2) May be detached, semi-detached, row houses, or multifamily structures;

(3) Must comply with all applicable zoning or deed restrictions, and applicable building and other governmental regulations;

(4) Must be designed in accordance with HUD minimum property standards; and

(5) Must be designed primarily for residential use, but may include commercial and community facilities determined to be adequate to serve the occupants. In general, the net rentable commercial area in any project may not exceed five percent of the total net rentable area, unless the commercial tenants leasing the space meet specific financial responsibility standards established by the Commissioner. In no event may the net rentable commercial area exceed 20 percent of the total net rentable area.

(b) The Commissioner must review all projects proposed for coinsurance under this part for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities as set fo in Part 50 of this title.

(c) No insurance will be made av able under this part for any buildi located in an area identified by t Federal Emergency Manageme Agency (FEMA) as having spec flood hazards unless (1) the jurisd tion in which the project is located participating in the National Flood I surance Program and is subject to CFR Parts 59 through 79 or (2) le than a year has passed since FEM notification regarding such hazard and flood insurance is obtained compliance with the Flood Disast Protection Act of 1973 (42 U.S.(4001).

(d) No insurance will be made avai able under this part with respect to property within the Coastal Barrier Resources Systems established by th Coastal Barriers Resources Act (1 U.S.C. 3501).

(e) Wherever applicable, project under this part must comply with th National Historic Preservation Act (1 U.S.C. 470).

(f) Involuntary displacement of ten ants must be minimized under a plan developed by the Mortgagor, in any case where it is anticipated that Substantial Rehabilitation will cause such displacement.

§ 251.202 Eligible mortgagors; Disclosure.

(a) Nonprofit, Builder-seller, Investor-sponsor, Cooperative, Limited Distribution, and General Mortgagors, as defined in § 251.3 and approved by the lender in accordance with standards established by the Commissioner, are eligible under this part. Differing maximum insurable Mortgage limits (see § 251.203) apply under sections 221(d)(3) and 221(d)(4) of the Act, depending upon the type of Mortgagor entity involved.

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[51 FR 13142, Apr. 17, 1986, as amended at 54 FR 39697, Sept. 27, 1989]

§ 251.203 Maximum Mortgage limitations.

The maximum Mortgage coinsurable under this part is the lowest of the amounts determined under the following limits:

(a) *Statutory cost limits.* Congress has established maximum per unit dollar amounts for costs attributable to dwelling use. These limitations vary by number of bedrooms, structure type (elevator or non-elevator), Mortgagor type, and section of the National Housing Act, and are changed from time to time by statute. In addition, to compensate for geographic differences in construction costs, the Commissioner may establish, where appropriate, high-cost area factors. These are percentage increases over the otherwise applicable basic dollar limits. The factor for any geographic area may not exceed 210 percent of the basic limit. The factor applicable to a particular project may be obtained from the appropriate HUD field office. On an individual project basis in high-cost areas, the Commissioner may approve the use of a factor of up to 240 percent of the basic limit where costs justify it. However, in any case that involves project mortgages purchased or to be purchased by the Government National Mortgage Association (GNMA) under its Special Assistance Functions authorized by former section 305 of the Act (Tandem programs), the Commissioner may not approve a factor of more than 190 percent. In the unusually high-cost areas of Alaska, Guam, and Hawaii, the Commissioner may approve the use of a factor of up to 360 percent. The Commissioner is also permitted to increase the otherwise applicable dollar limits by up to 20 percent to account for the installation in the project of a solar energy system (as defined in section 2(a) of the National Housing Act) or certain residential energy conservation measures (as defined in sections 210(11)(A) through (G) and (I) of Pub. L. 95-619). The maximum coinsurable amount may not exceed the sum of the project's total calculated statutory cost limit, plus the applicable percentage, below, of structural and land costs not attributable to dwelling use:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and limited distribution.	90
(2) 221(d)(3)	All others	100
(3) 221(d)(4)	All mortgagors	90

(b) *Replacement cost limits.* The replacement cost of a project is the total of the lender's estimate of the value of the land (or the value of the leasehold estate), determined in a manner prescribed by the Commissioner, plus physical improvements, utilities within the boundaries of the land, architect's fees, taxes, carrying and financing charges and miscellaneous charges incident to construction that are allowed by the Commissioner and approved by the lender. In the case of General and Limited Distribution Mortgagors, replacement cost is increased by BSPRA or SPRA, as appropriate. The maximum Coinsurable Mortgage cannot exceed the applicable percentage of the project's total replacement cost as follows:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and Limited Distribution.	90
(2) 221(d)(3)	Cooperative	98
(3) 221(d)(3)	All others	100
(4) 221(d)(4)	All Mortgagors	90

(c) *Debt service limits.* The net projected project income available for payment of debt service is determined by reducing the estimated gross income of the project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements, taxes, and distributions, where appropriate. In determining net projected project income for cooperative projects, a 3 percent operating reserve and a 2 percent vacancy reserve will be used in lieu of the vacancy and collection loss factor applicable to rental projects. The maximum Coinsurable Mortgage cannot exceed the amount that could

be amortized by the applicable percentage of net income set out below:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and Limited Distribution.	90
(2) 221(d)(3)	All others	95
(3) 221(d)(4)	All Mortgagors	90

(d) *Rehabilitation projects—additional limits.* In addition to the limits of paragraphs (a), (b) and (c) of this section, the following additional limits apply to projects to be Substantially Rehabilitated. (In the case of General and Limited Distribution Mortgagors, the cost of rehabilitation includes BSPRA or SPRA, as appropriate, where a cost-plus contract is used.)

(1) Where the property is owned by the Mortgagor in unencumbered fee simple or is subject to existing indebtedness to be refinanced by part of the proceeds of the Coinsured Mortgage, the maximum Coinsurable Mortgage may not exceed the sum of the cost of rehabilitation plus the applicable percentage of the lender's estimate of value of the property before rehabilitation as follows:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and Limited Distribution.	90
(2) 221(d)(3)	All others	100
(3) 221(d)(4)	All Mortgagors	90

(2) Where the property is to be acquired and the purchase price to be financed with part of the proceeds of the Coinsured Mortgage, and

(i) The Mortgagor is a General or Limited Distribution Mortgagor using section 221(d)(3), or any Mortgagor using section 221(d)(4), the maximum Coinsurable Mortgage cannot exceed 90 percent of the sum of the cost of rehabilitation plus the lesser of the purchase price of the property or the lender's estimate of value of the property before rehabilitation; or,

(ii) The Mortgage is to be coinsured under section 221(d)(3) and the Mortgagor is not a General or Limited Distribution Mortgagor, the maximum Coinsurable Mortgage cannot exceed the sum of the cost of rehabilitation plus the lesser of the purchase price of the property or the lender's estimate of the value of the property before rehabilitation.

[51 FR 13142, Apr. 17, 1986, as amended at 53 FR 8887, Mar. 18, 1988; 53 FR 10071, Mar. 29, 1988]

§ 251.204 Maximum interest rate.

The interest rate in a commitment to coinsure, including a commitment for Mortgage increase, shall be at such rate as may be agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment. The interest rate may not be increased after initial endorsement (insurance of advances) or start of construction (insurance upon completion), except that where a Mortgage increase is requested, processed, and approved, a higher rate may be applied to the amount of the increase only.

§ 251.205 Term of the Mortgage.

The Mortgage term may not exceed 40 years from the date of first payment to principal or 75 percent of the lender's estimate of the project's remaining economic life.

§ 251.206 Lender's fees and premiums.

(a) The lender may collect from the Mortgagor, and include in the Mortgage, an application fee, financing fee, permanent placement fee, and inspection fee. These fees may not exceed the maximums approved by the Commissioner. In addition, the lender may collect other reasonable fees, approved by the Commissioner, that are paid from sources other than Mortgage proceeds and are disclosed at initial endorsement (insurance of advances) or endorsement (insurance upon completion). In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance programs under section 221(d)(3) and 221(d)(4) of the National Housing Act.

(b) The coinsuring lender may collect a lender's premium of up to .25 percent per year of the average out-

standing principal balance of the Mortgage (without regard to delinquent payments or prepayments) beginning not earlier than 12 months after the date of initial endorsement (insurance of advances) or the date of endorsement (insurance upon completion). This premium will be for the account of the lender or an insurer of the lender.

§ 251.207 Coinsurance of Mortgages in lender's portfolio.

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The project requires Substantial Rehabilitation;

(2) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceding the submission of the application to the lender;

(3) Refinancing of portfolio loans makes up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period; and

(4) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(3) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole involvement is servicing.

§ 251.208 Nondiscrimination in housing and employment.

The Mortgagor must certify to the lender and to the Commissioner that, so long as the mortgage is coinsured under this part, it will:

(a) Not use tenant selection procedures that discriminate against families with children, unless the project was specifically designed for housing the elderly or handicapped;

(b) Not discriminate against any family because of the sex of the head of household;

(c) Comply with title VIII of the Civil Rights Act of 1968, as amended, and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin; administer the project and related activities to further fair housing in an affirmative manner; and comply with State and local fair housing laws;

(d) Comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin in housing and related facilities provided with Federal financial assistance; and

(e) Not discriminate because of race, color, religion, sex, or national origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 12246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements over the life of the mortgage.

(f) Not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by the Mortgage, for transient or hotel purposes. The term "rental for transient or hotel purposes" means (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellhop service; and

(g) Not sell the project as long as the Mortgage is coinsured under this part, unless the purchaser agrees to comply with the requirements of this section and with applicable transfer of physical assets requirements.

§ 251.209 Labor standards and prevailing wage requirements.

(a) *In general.* Except as specified in paragraph (b) of this section, the following labor standards and prevailing wage requirements shall be applicable to Mortgages coinsured under this part. The Commissioner shall assure compliance with those standards and requirements and the lender must obtain, evaluate, and submit any information or certifications required by the Commissioner to assist the Com-

missioner in carrying out this function.

(1) *Labor Standards.* Any contract, subcontract, or building loan agreement executed for a project to be constructed or Substantially Rehabilitated under this part shall comply with all applicable labor standards and provisions of 29 CFR Parts 1, 3 and 5, issued by the Secretary of Labor.

(2) *Ineligible advances.* No advance under the Mortgage shall be eligible for coinsurance after the lender determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

(3) *Wage certificate.* No advance under any Mortgage shall be coinsured under this part unless there is filed with the application for the advance, and no mortgage shall be coinsured under this part unless there is filed with the Commissioner after completion of the construction or Substantial Rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor before the beginning of construction and after the date of filing of the application for insurance.

(b) *Excepted transactions.* The Commissioner may waive the requirements of paragraph (a) of this section with respect to a cooperative housing project where laborers or mechanics not otherwise employed at any time in the construction of the project voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project and the Commissioner determines that any amounts saved thereby are fully credited to the cooperative undertaking the construction.

(The information collection requirements contained in paragraph (a)(3) of this section were approved by the Office of Management and Budget under control number 2502-0332)

Subpart D—Processing and Commitment

§ 251.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraphs (b), (d) and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information or certifications required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgagor, general contractor, consultant, and management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218;

(2) Environmental impact under the National Environmental Policy Act of 1969 and related laws and authorities set forth in 24 CFR Part 50;

(3) Equal opportunity considerations in the development and operation of the proposed project;

(4) The intergovernmental review procedures of 24 CFR Part 52. These procedures apply to cases involving 200 or more units in urbanized areas or 50 or more units in non-urbanized areas; and

(5) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(c) The lender must also submit any information required by the Commissioner for tracking or monitoring purposes.

(d) The Commissioner's authorized Departmental representative must endorse the Mortgage for coinsurance.

(e) The Commissioner retains responsibility for enforcement of labor standards and prevailing wage requirements set out in § 251.209. The Commissioner will perform all functions under § 251.209 except that he may delegate to the lender information collection (e.g. payroll review and routine interviews) or other routine administration and enforcement functions, subject to monitoring by the Commissioner.

(f) The precommitment review procedure set forth in this paragraph applies to any application for coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after April 26, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of April 26, 1990 are limited as follows:

(i) Firm commitments for insurance of advances may be granted two 60-day extensions;

(ii) Conditional commitments may be granted one 60-day extension;

(iii) Firm commitments for insurance upon completion may not be extended.

However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension;

(iv) It obligates the lender and HUD to proceed to the next stage (i.e., firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(The information collection requirements contained in paragraphs (b) and (c) of this section were approved by the Office of Management and Budget under control number 2502-0332)

[51 FR 13142, Apr. 17, 1986, as amended at 55 FR 11347, Mar. 27, 1990]

§ 251.302 Processing and commitment.

(a) After acceptance of an application for a commitment to coinsure, the lender will determine the maximum

coinsurable Mortgage, review plans and specifications for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 251.301(b);

(2) A waiver, where needed, of the approved high-cost factor under section 251.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 251.301(f).

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments, assuring commitments are updated when appropriate, and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

[51 FR 13142, Apr. 17, 1986, as amended at 55 FR 11347, Mar. 27, 1990]

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

§ 251.401 Insuance of advances or insurance upon completion; applicability of requirements.

Either insurance of advances or insurance upon completion procedures may be used under this part. In insurance upon completion cases, only the permanent loan is coinsured and a single endorsement is required after satisfactory completion of construction or Substantial Rehabilitation. In insurance of advances cases, progress payments approved by the lender are also coinsured and both an initial and final endorsement on the Mortgage are required. The requirements of §§ 251.404 through 251.406 apply in either case and the Mortgage and other closing documents must meet the requirements of Subpart F.

§ 251.402 Insurance of advances.

(a) *Financial Requirements.* (1) Before initial endorsement, the Mortgagor (other than a Nonprofit Mortgagor) must make a working capital deposit of two percent of the face amount of the Mortgage. The deposit must be made to the lender or be controlled by the lender in a depository acceptable to it. Unless the Commissioner approves exceptions, this deposit may be used only for equipping and rent-up of the project and, during construction, for allocation by the lender to accruals for taxes, ground rents, MIP, property insurance premiums, and assessments required by the terms of the Mortgage.

(2) Before initial endorsement, the Mortgagor must deposit with the lender cash that the lender deems sufficient, when added to the proceeds of the insured Mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to construction of the project. This cash will be held by the lender in a special account or by an acceptable depository designated by the lender under an appropriate agreement. The agreement will require all cash held to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any Mortgage money. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, Mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of the grant or loan funds, to pay cost of work, material or other charges and expenses. However, if any portion of these funds is to be

provided by the Mortgagor, that portion must be disbursed in full before the disbursement of the Mortgage proceeds.

(3) Charges to be paid by the Mortgagor in connection with the financing that are in excess of the initial service charge and that are acceptable to the Commissioner must be deposited with the lender in cash at or before initial endorsement. Alternatively, a note, in a form prescribed by the Commissioner, may be accepted by the lender. The note must evidence the obligations of a party other than the Mortgagor and may not be secured by the assets of the Mortgagor entity.

(4) The lender must require assurance of completion of offsite public utilities and streets. (An exception is made where a public body has agreed to install offsite improvements without cost to the Mortgagor and this agreement is acceptable to the lender.) The assurance must be either a cash escrow deposit or the retention by the lender at initial closing of a specified amount of the Mortgage proceeds allocated to land in the project analysis. If a cash escrow is used, it must be deposited with the lender or a depository designated by the lender. The lender may also require a surety bond.

(5) The lender may accept, in lieu of a cash deposit required by paragraphs (a)(1), (3) and (4) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the lender may accept for the portion so provided, in lieu of a cash deposit required by paragraph (a)(2) of this section, either an unconditional irrevocable letter of credit issued to the lender by a banking institution or an agreement, as described in § 207.19(c)(7) of this chapter, entered into by HUD, the governmental agency or instrumentality, the Mortgagor and the lender. The lender of record may not be the issuer of any letter of credit referred to in this paragraph (a)(5) without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the lender must provide cash equivalent to the undrawn balance under the letter of credit.

(b) *Building loan agreement.* Before initial endorsement, the lender and Mortgagor must execute a building loan agreement in a form approved by the Commissioner. This agreement sets out the terms and conditions under which progress payments may be advanced during construction. To be covered by coinsurance, each progress payment must be approved by the lender and must contain a certificate that the prevailing wage requirements of § 251.209 have been met.

(c) *Insured advances of components stored off-site.* The provisions of 24 CFR 221.541a apply to projects coinsured under this part, except that the lender performs the functions otherwise performed by the Commissioner.

(d) *Assurance of completion.* (1) The Mortgagor must furnish assurance of completion of the project. The lender may establish more stringent criteria, but, at minimum, must require assurance by bonds issued by a surety company acceptable to the Commissioner for payment and performance each in the amount of 100 percent of the estimated construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent (or 25 percent where the structure contains an elevator and is four stories or more) of the amount of the estimated construction or rehabilitation cost. An unconditional and irrevocable letter of credit may be substituted for this cash deposit under the same terms and conditions as provided in paragraph (a)(5) of this section.

(2) Alternatively, where the estimated cost of construction or rehabilitation is $500,000 or less, the lender may accept assurance of completion in the form of a personal indemnity agreement executed by the controlling principals of the general contractor.

§ 251.403 Insurance upon completion.

A commitment to coinsure upon completion prescribes a designated period during which the Mortgagor

must start construction or Substantial Rehabilitation. If construction or rehabilitation is started as required, the commitment will be valid for an additional period no longer than the lender's estimate of the construction period plus six months, except as extended as provided in § 251.302(c).

§ 251.404 Requirements applicable to both insurance of advances and insurance upon completion cases.

(a) *Latent defects escrow.* (1) In insurance upon completion cases, the Mortgagor must make a cash escrow deposit at endorsement of two and one-half percent of the principal amount of the mortgage, or provide a surety bond of 10 percent of the lender's estimate of the cost of construction or Substantial Rehabilitation, as a latent defects escrow. An unconditional and irrevocable letter of credit may be substituted for this cash escrow deposit under the same terms and conditions as provided in § 251.402(a)(5). This escrow must be retained by the lender for 15 months after substantial completion.

(2) In insurance of advances cases, if a completion assurance agreement referred to in § 251.402(d) was used at initial endorsement, an amount equal to two and one-half percent of the construction contract must be retained in cash or a letter of credit for a period of 15 months following substantial completion as a latent defects escrow.

(b) *Inspections during construction.* The lender must inspect projects under this part at such times during construction or Substantial Rehabilitation as the lender determines, within standards established by the Commissioner. The inspections must be conducted to assure compliance with the contract documents.

(c) *Cost certification requirements—Mortgagor.* (1) Before initial endorsement (insurance of advances) or start of construction (insurance upon completion), the Mortgagor and the lender must enter into an agreement satisfactory to the Commissioner that precludes any excess of Mortgage proceeds over statutory and regulatory limitations. In this agreement, the Mortgagor must also disclose its relationship with the builder, including any collateral agreement, and agree to:

(i) Enter into a construction contract that (A) complies with the requirements of § 221.548 of this chapter (as to whether the contract should be lump sum or cost-plus) and (B) is approved by the lender and acceptable to the Commissioner as to form and content;

(ii) Execute a certificate of actual costs when all physical improvements are complete; and

(iii) Reduce the Mortgage if necessary in accordance with § 251.405.

(2) The provisions of paragraph (c)(1) of this section relating to disclosure and the requirement of a construction contract do not apply where the Mortgagor and the general contractor are one and the same.

(3) If the Mortgagor, the general contractor, or their officers, directors or stockholders have any interest, financial or otherwise, as defined by the Commissioner, in any subcontractor, material supplier, or equipment lessor, the Mortgagor must disclose the identity of interest before start of construction. The lender may approve the use of a subcontractor, material supplier or equipment lessor having an identity of interest if the amounts paid to that entity do not exceed the rate prevailing in the locallity for similar types of labor and materials.

(4) The Mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, must be submitted to the lender when the improvements are completed to the satisfaction of the lender and before final endorsement (or before endorsement in the case of insurance upon completion). The certificate must show the actual cost to the Mortgagor of:

(i) The cost-plus construction contract or the lump sum construction contract or the cost of the construction of the project where the Mortgagor and the general contractor are one and the same and no construction contract is executed;

(ii) The architect's fee;

(iii) The offsite public utilities and streets not included in paragraph (c)(4)(A) of this section;

(iv) The organizational and legal expenses;

(v) In the case of General or Limited Distribution Mortgagors, where a cost-plus contract is used, the BSPRA or SPRA as applicable; and

(vi) Other items of expense approved by the Commissioner.

(d) *Cost certification requirements—general contractor.* (1) Where a cost-plus form of contract is used, the Mortgagor must also submit to the lender a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract, exclusive of the builder's fee.

(2) Where there is a cost-plus contract and the lender determines that an identity of interest (as defined by the Commissioner) exists between the Mortgagor or general contractor or any of their officers, directors, stockholders, or partners and any subcontractor, material supplier, or equipment lessor, the lender may require the Mortgagor to submit a certification by the subcontractor, material supplier, or equipment lessor as to the actual costs paid for labor, materials, subcontractors and overhead. This certification must be in a form prescribed by the Commissioner.

(e) *Exclusions.* The certifications required by paragraphs (c)(4) and (d) of this section must exclude any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Mortgagor or any of their officers, directors, stockholder or partners.

(f) *Records.* The Mortgagor must maintain adequate records of all costs of any construction or other cost items that do not represent work under the general contract and, in the case of a lump sum contract, must require the builder to keep similar records and, if requested by the lender or the Commissioner, must make these records (including any collateral agreements) available for examination, including examination by the Inspector General of HUD or the Comptroller General.

(g) *Certificate of public accountant.* In all projects exceeding 40 units, cost certifications must be supported by an audit of the cost certification statement and accompanying financial statements by an independent Certified Public Accountant or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970. The audit must include a statement that the accounts, records, and supporting documents have been examined in accordance with generally accepted auditing standards to the extent necessary to verify that they present fairly the actual costs.

(h) *Requisites of agreement and certification.* Any agreement, statement or certification required by this section must specifically state that it has been prepared for the purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as true.

(i) *Cost certification incontestable.* Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the Mortgagor.

(The information collection requirements contained in paragraphs (d), (f) and (g) of this section were approved by the Office of Management and Budget under control number 2502-0332)

§ 251.405 Lender's review of mortgage amount.

When the cost certifications submitted under § 251.404 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary and whether any requests for a mortgage increase are approvable.

§ 251.406 Application of net income received before beginning of amortization.

In the case of General and Limited Distribution Mortgagors, net income (as defined by the Commissioner) that is received after final endorsement but before the beginning of amortization will be applied in one or more of the following ways as the lender determines:

(a) To advance amortization;
(b) To offset construction costs approved by the lender; or
(c) To be deposited in the reserve for replacements in addition to the monthly deposits required by the regulatory agreement.

§ 251.407 Endorsement by the Commissioner.

Before start of construction in insurance of advances cases, and in all cases after completion of construction or Substantial Rehabilitation and completion of the lender's review of the Mortgage amount, the lender will hold a closing and submit required documentation to the Commissioner or the Commissioner's authorized Departmental representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the Act and the regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, i.e., the date of HUD endorsement of the project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 251.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

Subpart F—Mortgage and Closing Requirements

§ 251.501 Mortgage requirements—real estate.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage must be on real estate held:
(1) In fee simple;
(2) Under a renewable lease for not less than 99 years; or
(3) Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.
(b) The property must be held by an eligible Mortgagor and must, at the time the mortgage is coinsured, be free and clear of other liens except those approved by the lender in accordance with § 251.504.
(c) The mortgage must cover the entire property included in the housing project.

[51 FR 13142, Apr. 17, 1986, as amended at 52 FR 37289, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987]

§ 251.502 Title.

(a) *Eligibility of title.* Title to the mortgaged property must be vested in the Mortgagor on the date the Mortgage is filed for record.
(b) *Title evidence.* Before coinsurance of the Mortgage, the Mortgagor must furnish the lender with a survey satisfactory to the lender, of the Mortgaged property and a title insurance policy covering the property. If, for reasons that are satisfactory to the lender, title insurance cannot be furnished, the Mortgagor must furnish evidence of title in accordance with paragraph (b)(2) of this section. The types of title evidence are:
(1) A title insurance policy issued by a company, and in a form, satisfactory to the lender. The policy must name the lender and the Commissioner as the insureds, as their interests may appear. The policy must also provide that, upon acquisition of title by the lender, it will become an owner's policy running to the lender.
(2) An abstract of title satisfactory to the lender, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the lender as to the quality of the title, signed by an attorney experienced in the examination of titles.

§ 251.503 Mortgage and note provisions.

(a) The Mortgage and note must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without the prior written approval of the Commissioner.
(b) The Mortgage must be executed by an eligible Mortgagor.
(c) The Mortgage must be a first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The note must provide for equal monthly payments of interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by the Mortgagor and lender and acceptable to the Commissioner.

(e) The lender will determine the date of first payment to principal. The lapse of time between completion of the project and beginning of amortization must not be longer than the lender determines, in accordance with standards established by the Commissioner, to be necessary to obtain sustaining occupancy.

(f)(1) The Mortgage must provide that all monthly payments made by the Mortgagor to the lender be added together into a single payment made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgagor or for the account of the Mortgagor to the following items in the order listed:

(i) MIP under the Contract of Coinsurance;

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(iii) Interest on the Mortgage; and

(iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i)(1) Partial or full prepayment of the Mortgage is permitted, subject to standards and restrictions established by the Commissioner with respect to prepayments of mortgages that: (A) Cover projects in which units are subsidized under section 8 of the United States Housing Act of 1937 or other Federal law or (B) may be purchased, assigned, or otherwise transferred to the Government National Mortgage Association (GNMA).

(2) Where the Mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipatory notes, or both, the Mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the lender in term amount and conditions in accordance with standards adopted by the Commissioner.

(j) The note may provide for the collection by the lender of a late charge, not to exceed four percent of each payment to interest and principal that is more than 15 days late, or such other charges as may be agreed to by the lender and the Commissioner, to cover the extra expense of handling delinquent payments. Late charges must be separately charged to and collected from the Mortgagor and may not be deducted from any total monthly payment.

(k) The Mortgage must contain a covenant prohibiting the use of the property for any purpose other than the residential purpose intended on the day the Mortgage was executed.

(l) The Mortgage must contain a covenant, acceptable to the Commissioner, that binds the Mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the Commissioner or the lender. The amount must comply with the coinsurance clause applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be in the amount estimated by the lender after completion of the project. A standard

mortgagee clause making loss payable to the lender and the Commissioner as their interests may appear must be included in the mortgage. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the Mortgage. If the Mortgagor does not obtain the required insurance, the lender must do so and assess the Mortgagor for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

§ 251.504 Mortgage lien and other obligations.

The Mortgagor and the lender must certify at endorsement of the loan for insurance, and the lender must determine, that:

(a) The property covered by the mortgage is free and clear of all liens other than the Coinsured Mortgage, except that the property may be subject to an inferior lien, made or held by a Federal, State or local governmental agency or instrumentality as provided in 24 CFR 221.520(b). No lien (other than State or local liens of taxes and assessments, or ground rents) may have a priority equal or superior to the Coinsured Mortgage.

(b) All contractual obligations in connection with the Mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the lender and determined by the lender to be of a lesser priority for payment than the obligation of the insured Mortgage and that meet standards established by the Commissioner.

(c) Any additional obligations provided for in this section are represented by promissory notes on forms approved by the Commissioner. These notes must not be due and payable until the maturity date of the Mortgage, but may be prepaid from Surplus Cash or Residual Receipts in accordance with the conditions prescribed in the regulatory agreement between the lender and the Mortgagor.

§ 251.505 Regulatory agreement.

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner coinsures the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines that the additional lender controls or requirements do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

§ 251.506 Other closing documents.

The lender will require execution of such other closing documents as the Commissioner may require.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

§ 251.601 Requirements applicable to all projects.

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only in the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administrative procedures for previous participation clearance and Transfers of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits;

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or

obligation not in connection with the project.

(d) The Mortgagor may not resign or withdraw from the project until the lender has approved a substitute Mortgagor.

§ 251.602 Requirements for projects intended for cooperative ownership.

(a) *Investor-sponsor's escrow.* The lender must hold in escrow the amount it determines will be needed, in the event the project is not transferred to a Cooperative within two years of the date of project completion, to reduce the principal of the Mortgage to an amount authorized for a Limited Distribution Mortgagor. The amount held in escrow may be disbursed to the Mortgagor if the transfer occurs within the two-year period. Where the transfer does not occur within this period, the escrow will be applied against the Mortgage or in such other manner as the lender and the Commissioner authorize.

(b) *Compensation to Investor-sponsor.* The consideration for the transfer to a Cooperative Mortgagor will be the assumption of the Mortgaged indebtedness plus a down payment in an amount which, when added to the original principal, may not exceed the Investor-sponsor's actual certified cost as approved by the lender under § 251.404.

§ 251.603 Requirements for projects intended for nonprofit ownership.

(a) *Builder-seller's escrow.* The lender must hold in escrow the amount it determined will be needed, in the event the project is not transferred to a Nonprofit Mortgagor within two years of the date of project completion, to reduce the principal of the Mortgage to an amount authorized for a Limited Distribution Mortgagor. The amount held in escrow may be disbursed to the Mortgagor if the transfer occurs within the two-year period. Where the transfer does not occur within this period, the escrow will be applied against the Mortgage or in such other manner as the lender and the Commissioner authorize.

(b) *Compensation to Builder-seller.* The consideration for the transfer to the Nonprofit Mortgagor shall be the assumption of the Mortgage indebtedness, to which may be added a cash payment in an amount which, when added to the original principal, may not exceed the Builder-seller's actual certified cost as approved by the lender under § 251.404.

Subpart H—Program Requirements Relating to Project Operation

§ 251.701 General.

In order to be eligible for the benefit of insured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

§ 251.702 Reserve for replacements and general operating reserve.

(a) The Mortgagor must establish and maintain a reserve for replacements which will be held and administered by the lender. The Mortgagor must accumulate, maintain and use this reserve, and the lender must administer this reserve, only as provided in the regulatory agreement and the Commissioner's administrative procedures.

(b) In addition to the reserve for replacements required by paragraph (a) of this section, a Cooperative Mortgagor must establish with the lender a general operating reserve in an amount required by the Commissioner's administrative procedures. The Cooperative Mortgagor must accumulate, maintain and use this reserve only as provided in the regulatory agreement and the Commissioner's administrative instructions.

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements (and, in the case of Cooperatives, a general operating reserve) must be invested in U.S. Treasury securities, securities issued by a Federal agency, or deposits that are insured by an agency of the Federal Government.

§ 251.703 Rents and charges.

(a) For units occupied by tenants assisted under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing As-

sistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), Part 882, Subpart E (Section 8 Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies) or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title, the Commissioner will determine the rents and charges for facilities and services in accordance with the HAP Contract, HUD's regulations, and administrative instructions governing the program under which the unit is receiving assistance. The Mortgagor may not charge rents for units occupied by Section 8 assisted tenants that exceed rents charged for comparable, unassisted units in the project without the prior approval of the Commissioner, and the Mortgagor may not impose lesser charges for facilities and services on unassisted tenants than those imposed on assisted tenants.

(b) For units (other than those governed by paragraph (a) of this section) in projects with mortgages coinsured under section 221(d)(3) of the National Housing Act, the Mortgagor may collect unit rents and other charges only in amounts less than or equal to those approved by the lender. In determining maximum allowable rents and charges and in acting upon applications for changes, the lender must adhere to standards that the Commissioner establishes. These standards are designed to set rents at a level needed to maintain the economic soundness of the project and to provide a reasonable return to the Mortgagor and reasonable rents to tenants.

(c) Any requests for rent increases must be submitted and processed on a form that the Commissioner prescribes.

(d) If the mortgage is coinsured under section 221(d)(4) of the National Housing Act, and the lender does not elect to regulate rents pursuant to paragraph (e) of this section, the Mortgagor will determine the rents for all units, except for those that are occupied by tenants receiving Section 8 assistance. For a project not constructed for occupancy exclusively by the elderly or handicapped, the Mortgagor may also determine the charges for facilities or services. For a project constructed for occupancy exclusively by the elderly or handicapped, the Mortgagor may charge for facilities or services offered by the project only after obtaining any lender approval that the Commissioner's administrative instructions require. These charges must be reasonable in amount, and may not exceed any amounts approved by the lender. The mortgagor may not charge for perpetual care or life care.

(e) For any mortgage co-insured under section 221(d)(4) of the National Housing Act, the lender may, subject to the Commissioner's administrative instructions, regulate rents and charges for any units not occupied by Section 8-assisted tenants, if the lender determines (under standards established by the Commissioner) that such regulation is necessary to comply with the requirements of the Internal Revenue Code or State law.

(f) Any State or local law, ordinance or regulation regulating the rents of projects subject to this part may be preempted only as provided in Part 246, Subpart B of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0314)

[51 FR 20273, June 4, 1986]

§ 251.704 Use of project funds.

(a) The Mortgagor must deposit all rents and other receipts of the project in the name of the project in accounts that are fully insured as to principal by an agency of the Federal government. Project funds in excess of these needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may use project funds only for:

(1) Payment of Mortgage obligations;

(2) Payment of reasonable expenses necessary to the proper operation and maintenance of the project;

(3) Deposits to the reserve for replacements and other required reserves;

(4) Distributions of Surplus Cash permitted under § 251.705;

(5) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(c) The Mortgagor may not use project funds to liquidate liabilities related to the construction of the project, other than the Coinsured Mortgage, unless the lender authorizes this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the project. This trust account must be held in the name of the project and the balance in the account must at all times equal or exceed the project's liability for residents' security deposits. The owner must comply with any State or local laws regarding investment of security deposits and the Distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the project or the project residents.

§ 251.705 Distributions and residual receipts.

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative requirements.

(1) Distributions may be paid only from Surplus Cash that exists as of the end of a semi-annual or annual fiscal period.

(2) Initial Distributions may be paid only after construction has been completed and the Mortgagor has submitted the cost certifications required by § 251.402.

(3) No Distribution may be paid from borrowed funds, or when payments due under the note, Mortgage, or regulatory agreement have not been made.

(b) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so;

(1) The Mortgagor has not satisfactorily responded to any lender on HUD on-site review report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made;

(2) The lender determines and gives the owner written notification that the project has significant uncorrected physical deficiences; or

(3) there is a covenant, default (as defined in § 251.806(b) under the provisions of the Mortgage or the regulatory agreement.

(c) The Mortgagor must limit Distributions in any one fiscal period to the amount specified in this paragraph (c), and must calculate Distributions in accordance with the administrative requirements of the Commissioner.

(1) Cooperative projects not receiving assistance under Part 886 of this title, Section 8 Housing Assistance Payments Program—Special Allocations, may distribute all Surplus Cash to members. Cooperatives receiving assistance under Part 886 may distribute only the portion of Surplus Cash attributable to unsubsidized units. Surplus cash must be prorated to subsidized and unsubsidized units in accordance with the Commissioner's administrative procedures.

(2) No Distributions are permitted on nonprofit rental projects.

(3) On projects owned by Limited Distribution Mortgagors, Distributions may not exceed the lesser of Surplus Cash on the amount allowable by the lender as of the end of the period covered by the Surplus Cash computation. Distributions are cumulative. If the project receives subsidy payments for HUD, Distributions will be earned at a rate prescribed in the regulations and administrative procedures applicable to that subsidy program. If the project does not receive subsidy payments from HUD, Distributions will be earned annually or semiannually at a

rate prescribed by the lender consistent with State or local law.

(4) On projects owned by General Mortgagors, all Surplus Cash generated during the fiscal period covered by the Surplus Cash computation may be distributed to the Mortgagor.

(d) Nonprofit and Cooperative Mortgagors must deposit Residual Receipts with the lender within 60 days after the end of each fiscal year in which Surplus Cash is generated. Limited Distribution Mortgagors must deposit Residual Receipts with the lender within 60 days after the end of each annual or semiannual fiscal period in which Surplus Cash is generated.

(e) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(1) If the project contains units that are occupied by assisted tenants and are subject to a Section 8 Housing Assistance Payments Contract under Part 880, Part 881, Part 883 or Part 886, the lender may release Residual Receipts only after obtaining the Commissioner's written approval and only in accordance with the Commissioner's administrative requirements.

(2) The Mortgagor may use Residual Receipts only for such purposes as the Commissioner or the lender authorize.

(f) The lender must invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner, or by the lender in accordance with the Commissioner's administrative requirements.

(g) When the contract of coinsurance is terminated any funds remaining in the Residual Receipts account must be distributed in accordance with the Commissioner's administrative requirements.

§ 251.706 Project management.

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commissioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner and lender may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligation to pay) fees for management services.

(e) Establish and maintain the project's books, accounts and records in accordance with the Commissioner's and lender's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 31, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports; properly certified copies of minutes of meetings

of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity; and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's or HUD's on-site review reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In renting units adhere to the civil rights and equal opportunity requirements set forth in § 251.208.

(j) Give preference to families or individuals displaced from an urban renewal area, or as a result of governmental action or a major disaster as determined by the President.

(k) Permit occupancy of:

(1) Unsubsidized units only under a lease or occupancy agreement that meets the requirements of this part and any requirements established by the lender; and

(2) Subsidized units only under a lease or occupancy agreement approved by the Commissioner.

(l) Adhere to the Commissioner's occupancy requirements for any units assisted under a project-based Section B Housing Assistance Payments Contract.

(m) Not permit any part of the project to be rented for transient or hotel purposes. The term rental for transient or hotel purposes means (1) rental for any period less than 30 days or (2) any rental, if the occupants of the housing accommodation are provided customary hotel services, such as room service for food and beverage, maid service, furnishing and laundering of linens, and bellhop service.

(The information collection requirements contained in paragraphs (g) and (h) were approved by the Office of Management and Budget under control numbers 2502-0314 and 2502-0108, respectively)

Subpart I—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 251.801 MIP in insurance of advances cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before the initial endorsement of the Mortgage for coinsurance, the lender must collect a MIP from the Mortgagor equal to one percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of initial endorsement, the lender must, before each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, collect from the Mortgagor an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Before the first principal payment, the lender must collect from the Mortgagor an amount equal to 0.5 percent of the average outstanding principal balance of the Mortgage for the year following the first principal payment.

(4) Beginning with the first principal payment and continuing until the Coinsurance Contract terminates, the lender must collect and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal that will be outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 251.804.

(5) The MIP required under paragraphs (a) (1) and (2) of this section may be included in the Mortgage. The Mortgagor must pay the MIP required under paragraphs (a) (3) and (4) of this section from its own funds.

(b) *Payment of MIP by the lender.* (1) At initial endorsement, the lender must pay to the Commissioner an initial MIP equal to .65 percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of the initial endorsement, the lender must, on each anniversary

of the date of initial endorsement that occurs more than 30 days before the first principal payment, pay to the Commissioner an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Following final endorsement, the Commissioner will adjust the MIP so that it equals .65 percent per year of the average outstanding principal balance for the year following the date of initial endorsement plus 0.5 percent per year of the average outstanding principal balance for the period from the first anniversary of initial endorsement to the date of the first principal payment. If the adjusted amount is less than the amount previously paid by the lender, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(4) On the date of the first principal payment and each year thereafter on the anniversary of the date on which the first principal payment was due, and continuing until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance of the Mortgage for the 12 months following the date the premium becomes payable. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 251.804.

§ 251.802 MIP in insurance upon completion cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor a MIP equal to 0.5 percent per year of the average outstanding principal balance of the Coinsured Mortgage from the date of the endorsement to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor monthly MIP sufficient to accumulate and place in escrow 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments of the Mortgage except as provided in § 251.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.5 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.5 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 251.804.

§ 251.803 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;

(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

§ 251.804 Pro-rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner a will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

§ 251.805 Late charges—MIP.

(a) If the Commissioner receives a MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives a MIP payment more than 30 days after the late of the billing or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set in conformity with the Treasury Fiscal Requirements Manual.

PROTECTION OF MORTGAGE SECURITY

§ 251.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

[53 FR 33736, Aug. 31, 1988]

DELINQUENCY AND DEFAULT UNDER THE MORTGAGE

§ 251.807 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must give the Commissioner written notice of the delinquency. This notice must include the information required by the Commissioner's administrative procedures. The lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2502-0041)

§ 251.808 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

§ 251.809 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

§ 251.810 Notice of default.

If a default (as defined in § 251.808) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the

Commissioner, the lender must submit this notice monthly on a form prescribed by the Commissioner until the default has been cured, the lender has acquired title to the property, or the coinsurance contract has been terminated.

(The information collection requirements were approved by the Office of Management and Budget under control number 2502-0041)

§ 251.811 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this section. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 251.821(b) in any subsequent claim for insurance benefits, if the lender complies with the conditions set forth in this section and the notice requirements set forth in §§ 251.810 and 251.815. The lender must service delinquent loans in accordance with the Commissioner's administrative requirements.

(1) *Temporary adjustment of Mortgage payments.* Without obtaining the Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative requirements) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) *Withdrawal from the reserve for replacements.* If the Mortgage is more than 25 days delinquent, the lender may withdraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) *Suspension of deposits to the reserve for replacements.* The lender may suspend up to six months' reserve deposits for up to six months during any 36 month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) *Recasting the Mortgage.* The lender may recast delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

(The information collection requirements contained in paragraph (a)(1(iv) were approved by the Office of Management and Budget under control number 2502-0108)

§ 251.812 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The Mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

Termination

§ 251.813 Termination of coinsurance contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefits;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage.

(b) The Contract of Coinsurance may, at the option of the Commissioner, be terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage which does not meet the requirements of § 251.106.

(c) When the Coinsurance Contract is terminated, all of the rights an obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

§ 251.814 Notice and date of termination by Commissioner.

The Commissioner will notify the lender that the contract of coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 251.813 occurs.

Claim Procedure and Payment of Insurance Benefits

§ 251.815 Notice of election to acquire property and file a claim.

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that (a) the lender and the Mortgagor are diligently pursuring reinstatement of the Mortgage, and (b) reinstatement of the Mortgage and resolution of the problems that lead to the default are feasible.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2502-0332)

§ 251.816 Acquisition of property.

Unless the Commissioner has given the lender a written extension, within 30 days after submitting the notice required by § 251.815, the lender must institute action either to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management, as set forth in the regulatory agreement and the Commissioner's administrative procedures.

§ 251.817 Deed-in-lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is canceled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a covenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

§ 251.818 Disposition of property and application for insurance benefits.

(a) After acquisition of marketable title to the property, the lender must obtain two appraisals of the property peformed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use. The higher of the two appraisal values shall be deemed the appraisal value for purposes of this subpart.

(b) After the lender sells the property, or after the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 251.820. The lender must file the claim no later than 15 days after the sale, or expiration of the 12-month period, whichever is applicable, or Mortgage interest will be curtailed in accordance with § 251.821(b).

(c) The lender must file the claim on a form approved by the Commissioner and must state the sales price and the income and expenses incurred in connection with the acquisition, repair, operation, and sale of the property. The lender must also submit evidence in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a) of this section, and ledger records and documentation for all accounts relating to the Mortgage transaction.

(d) If the property has not been disposed of at the time of the lender's request for payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales price.

(The information collection requirements contained in paragraph (c) of this section were approved by the Office of Management and Budget under control number 2502-0332)

§ 251.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply, except that the debentures will be dated as of the date of settlement of the claim.

[53 FR 33736, Aug. 31, 1988]

§ 251.820 Amount of payment.

(a) The basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed in lieu of foreclosure;

(2) Plus all items set forth in § 251.821;

(3) Less all items set forth in § 251.822.

(b) The Commissioner will pay insurance benefits equal to 85 percent of the amount computed under paragraph (a) of this section if the lender (1) Has obtained no insurance of its coinsurance risk, (2) has insured 50 percent of its coinsurance risk or (3) is a State Housing Agency eligible as a lender under § 203.8(b) of this chapter that obtained reinsurance from an authorized public mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 72.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either 100 percent of its coinsurance risk or that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance

obtained by the lender changes. If reinsurance is increased after initial or final endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be increased if reinsurance is reduced or cancelled after final endorsement.

§ 251.821 Items included in payment.

In computing insurance benefits, the following items will be added to the amount described in § 251.820(a)(1):

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default. However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of the insurance benefits. However, if the lender fails to meet any of the requirements of §§ 251.810, 251.815, 251.816, or 251.818(b), within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late.

(c) An amount not in excess of two-thirds of the costs actually paid by the lender and approved by the Commissioner of acquiring the property. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property.

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Expenses in connection with the sale of the property.

§ 251.822 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 251.820(a)(1):

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure.

(b) All amounts received by the lender on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract.

(c) All cash or funds related to the mortgaged property that the lender holds (or to which it is entitled) including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral funding a GNMA Deposit Agreement relating to the lender-issuer loss exposure during the GNMA Indemnity Period.

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project or the appraised value of the project as provided in § 251.818, as follows:

(1) If the lender disposes of the project through a negotiated sale, the amount deducted will be the higher of the sales price or the appraised value.

(2) If the lender disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted will be the sales

price, even if it is lower than the appraised value.

(3) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value.

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

[51 FR 13142, Apr. 17, 1986; 51 FR 17175, May 9, 1986]

§ 251.823 [Reserved]

REMEDIES FOR DEFAULT BY A LENDER-ISSUER UNDER THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA) MORTGAGE-BACKED SECURITIES PROGRAM

§ 251.824 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a coinsured loan, the Commissioner will reimburse the Association for the amount the Association must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 15 percent or 27.75 percent (whichever is appropriate) of the amount computed under § 251.820, plus the amount referenced in § 251.822(a). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

§ 251.825 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the Commissioner may request that the Mortgagee Review Board withdraw approval of the lender-issuer as a HUD-approved Mortgagee, un the provisions of Part 25 of this t

§ 251.826 HUD recourse against len issuer.

If the Commissioner is required make payments to GNMA becaus the lender-issuer's failure to pay amount owed to a holder of GNMA curities backed by a Coinsured M gage, the lender-issuer will be li for reimbursing the Commissioner the payments.

§ 251.827 GNMA right to assignment.

If the lender-issuer defaults on obligations under the GNMA M gage-Backed Securities Progr GNMA will have the right, notwi standing the requirements § 251.106, to cause all Coinsured M gages held in GNMA pools by the faulting coinsuring lender-issuer to assigned to another GNMA-appro coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortg that is not in default and is held b defaulting lender-issuer, GNMA first attempt to have the Mortgage signed to another eligible coinsur lender by soliciting offers to assu the defaulting lender-issuer's rig and obligations under the Mortg from those eligible coinsuring lend that are indicated on a periodically dated listing furnished to GNMA the Commissioner and that are GNMA issuers.

(2) If GNMA rejects all offers or offers are received, GNMA will h the right to perfect an assignment the Mortgage to itself.

(b) For any Coinsured Mortg that is in default and held by a faulting lender-issuer, GNMA have the right to perfect an assi ment of the Coinsured Mortgage rectly to itself before extinguishi the Mortgage by completion of fo closure action or acquisition of title deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give t Commissioner written notice within days after taking a Mortgage by signment in accordance with this tion, in order to allow an appropri endorsement and necessary change the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 221. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR Part 221, except that any payment will be made in cash instead of debentures.

§ 251.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

(a) If, as a result of a default by a lender-issuer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay any amount owed to a securities holder, GNMA as substitute lender-issuer shall be entitled to file a claim for and to receive coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if the defaulting lender-issuer has acquired legal title to property previously covered by a co-insured mortgage ("coinsured property") but has not received coinsurance benefits under this subpart, and if the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. Such a claim may be filed by GNMA notwithstanding the requirements of § 251.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender issuer. The lender-issuer will have no claim against the Commissioner for any payment pursuant to this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders exceeds the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, then the Commissioner shall reimburse GNMA for such additional amount in accordance with § 251.824(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain, an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage following the lender-issuer's acquisition of legal title to the underlying coinsurance property on behalf of securities holders and GNMA. Such assignment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to it. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a) if the Commissioner is required to pay coinsurance proceeds under this subpart to any party other than GNMA with respect to the Coinsured Mortgage.

[51 FR 13142, Apr. 17, 1986; 51 FR 17175, May 9, 1986]

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

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AUTHORITY: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 33736, Aug. 31, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 252.1 Purpose and scope.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approval lender:

(1) Assume a percentage of any loss, and

(2) Carry out (subject to monitoring) underwriting, commitment, loan servicing, management oversight, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under Coinsurance will reduce processing time and HUD staff burden, and increase lender involvement in all phases of the HUD mortgage insurance process.

(c) This part provides for the Coinsurance of Mortgages under section 232 of the Act, which covers nursing homes, intermediate care facilities and board and care homes. With the exception of mortgages coinsured under Subpart J of this part, Projects covered by a coinsurance mortgage under this part must be newly constructed or substantially rehabilitated.

(d) No full insurance authorized under any provision of the Act will be withdrawn, denied, or delayed because of the availability of Coinsurance under this part.

(e)(1) If the Commissioner determines that Coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods, the Commissioner will discontinue the program after due notice. In such a case, no further Coinsurance applications will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the market for projects under this part and related facilities or mortgage markets, or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue coinsurance activities in such area after due notice.

(f) Neither the Coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

§ 252.2 Coinsurance contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commissioner's authorized Departmental representative, and includes the terms, conditions and provisions of this part.

§ 252.3 Definitions.

(a) "Act" means the National Housing Act, as amended.

(b) "Board and Care Home" means a proprietary residential facility, or a residential facility owned by a private nonprofit corporation or association, providing room, board and continuous protective oversight, which facility is regulated by a State in accordance with section 1616(e) of the Social Security Act. Said facility will be located in a State that, at the time an application is made for coinsurance under this part, has demonstrated to the coinsuring lender that it is in compliance with the provisions of section 1616(e). Continuous protective oversight involves a range of activities or services, which services might include such services for relatively independent occupants as awareness on the part of management and staff of an occupant's condition and whereabouts and the ability to intervene in the event of crisis, or for relatively dependent occupants, such services as supervision of nutrition or medication, assistance as necessary with activities of daily living, such as bathing, dressing, shopping, or eating, or a twenty-four hour responsibility for the welfare of the occupant. Continuous protective oversight is not limited to the above activities, nor must it include the examples given.

(c) "Coinsured mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by an endorsement of the mortgage note by the Commissioner or by the Commissioner's authorized representative.

(d) "Distribution" means the withdrawal of any cash or asset of the Project, excluding outlays for:

(1) Any payment due under the Mortgage or regulatory agreement.

(2) Reasonable expenses necessary for proper operation and maintenance of the Project; and

(3) Repayment of advances from the owner, when such repayments are authorized by the Commissioner.

(e) "Firm commitment" means the commitment from the lender to the Mortgagor that contains final determinations by the lender of the maximum insurable Mortgage, which determination is based upon complete working drawings, specifications and cost estimates, and is prepared in a manner specified by the Commissioner. The Firm Commitment may not be issued for longer than sixty days, by which time the Project must be initially endorsed for insurance of advances cases or construction started for insurance upon completion cases. The Firm Commitment may be extended by the lender as provided in § 252.4.

(f) "Intermediate Care Facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, or if there is no State law providing for such licensing and regulation, then by the municipality or other political subdivision in which the facility is located. The facility will provide for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.

(g) "Mortgage" means a first lien on real estate and other property commonly given to secure either advances on real estate or the unpaid balance of the purchase price of real estate under the laws of the jurisdiction in which the real estate is located. "Mortgage" includes any credit instrument(s) secured by the real estate.

(h) "Mortgage Insurance Premium" (MIP) means the mortgage insurance premium collected under §§ 252.801 and 252.802 of this part.

(i) "Mortgagor" means the original borrower under a Mortgage and its successors, and any assigns approved by the Commissioner.

(j) "Nonprofit mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operation of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(k) "Nursing Home" means a public facility, proprietary facility or a facility of a private nonprofit corporation or association, licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in

which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services. In all such facilities the nursing care and medical services must be prescribed by, or under general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(l) "Project" means a Nursing Home, Intermediate Care Facility or Board and Care Home, or any combination of Nursing Home, Intermediate Care Facility, or Board and Care Home approved by the lender under provisions of this subpart. A Project includes the land on which it is situated and, subject to standards established by the Commissioner, a Project may include:

(1) Such additional facilities as may be authorized by the lender for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day and

(2) Such major movable equipment as may be authorized by the lender as necessary for the operation of the Project.

(m) "Proprietary mortgagor" means an owner that is profit motivated, and may be a corporation, partnership, trust, individual, or any other qualified legal entity.

(n) "Public Mortgagor" means a Federal or State instrumentality, a municipal corporate instrumentality of one or more states, or a redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to charges, capital structure, rate of return, or methods of operation.

(o) "Residual Receipts" means all surplus cash of projects owned by nonprofit or public mortgagors.

(p) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(q) "Substantial rehabilitation" consists of repairs, replacements, and improvements and additions:

(1) The cost of which exceeds fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

(i) Roof structures;

(ii) Ceiling, wall, or floor structures;

(iii) Foundations;

(iv) Plumbing systems;

(v) Heating and air conditioning systems;

(vi) Electrical systems.

(r) "Sound capital resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as its net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound capital resources may include (up to the limit specified in § 252.102(b)(2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than $100,000,000. For purposes of determining sound capital resources, an account established to cover coinsurance obligations under this part that is treated as a liability in the lender's balance sheets may be deemed a capital item rather than a liability.

(s) "Surplus cash" means any unrestricted cash remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of the Mortgage coinsured by the Commissioner;

(ii) All amounts required to be deposited in any replacement or operating reserve; and

(iii) All other obligations of the Project, unless funds for payment are set aside or deferral of payment has been approved by the lender; and

(2) The segregation and recording of an amount equal to:

(i) The aggregate of any special funds required to be maintained by the Project; and

(ii) The Project's total liability for patient or resident security deposits.

In computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

§ 252.4 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments will not adversely affect the interests of a lender under a Contract of Coinsurance on any Mortgage already coinsured or on any Mortgage to be coinsured on which the lender has already issued a firm commitment to insure, provided the Mortgage is initially endorsed (insurance of advances) or construction starts (insurance upon completion) within 60 days after issuance of the Firm Commitment. The 60 days will run from the date of the original issuance of the Firm Commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment of the regulation.

Subpart B—Lender Requirements

§ 252.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6 or 203.7(c); and (b) meets the requirements of § 252.102. A lender approved as a coinsuring lender under the provisions of 24 CFR Part 255 may be approved for coinsurance for the purchase or refinancing of Nursing Homes, Intermediate Care Facilities or Board and Care Homes only if the lender has also been approved as a coinsuring lender under provisions of this part.

§ 252.102 Review and approval as coinsuring lender.

The Commissioner will review an applicant lender's technical staff and procedures before granting approval as a coinsuring lender under this part. This review, which may include an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, mortgage servicing, and any disposition functions.

(a) A fee of $5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has the necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than $1,500,000, in liquid funds. Up to $500,000 of the Sound Capital Resources may be met by an unconditional and irrevocable firm letter of credit. The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement.

(3) A statement agreeing to establish and maintain on its books as a portion of its Sound Capital Resources a designated and dedicated account in liquid assets which could only be used for the purpose of meeting the lender's coinsurance obligations as defined in the Commissioner's administrative requirements. The dedicated account within the lender's liquid Sound Capital Resources must be established initially in an amount not less than $500,000. Thereafter, the lender must deposit and maintain the following additional assets in the dedicated account:

(i) A deposit at the time of each loan closing, in accordance with the following schedule:

(A) $1 for each $150 of principal indebtedness on mortgages it coinsures under this part, until the dedicated account reaches $3 million; and

(B) $1 per $300 thereafter.

(ii) An amount equivalent to four years of the lender's share of the annual mortgage insurance premium for each project to be deposited at the time of each loan closing or in increments within four years of closing.

The Commissioner may provide by Notice published in the FEDERAL REGISTER program-wide standards for reduced deposits to the dedicated ac-

count based on program and lender actuarial experience.

(4) Evidence acceptable to the Commissioner that:

(i) The lender has the operating procedures, internal management controls, and technical staff necessary to discharge full Mortgage underwriting, oversight, servicing, management, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions.

(ii) The lender has staff in its own employ who are experienced in the development and operation/management of Nursing Homes, Intermediate Care Facilities and Board and Care Homes and can analyze and evaluate various technical factors such as:

(A) The certificates required under the provisions of § 252.303 of this part,

(B) Reimbursement schedules for Nursing Homes, Intermediate Care Facilities and Board and Care Homes under Federal or State funded programs and other third party payors, and

(C) Market analyses, operational reviews, etc., for arriving at overall feasibility determinations.

(5) A statement agreeing to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(6) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(7) A statement agreeing to file periodic certifications on lender financial condition and annual audits similar to those described in paragraph (a)(6) of this section, and monthly reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The certifications, annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(8) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial records of the lender.

(9) A statement agreeing to comply with the provisions of Title VIII of the Civil Rights Act of 1968 as amended, the Equal Credit Opportunity Act, Executive Order 11063 as amended, and other Federal laws and regulations issued under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(10) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 252.105.

(11) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing the lender's functions under this part.

(12) A statement agreeing to notify HUD immediately whenever the lender's Sound Capital Resources fall below the level required by paragraph (b)(2) of this section. In addition, the lender must agree that it will request and receive approval from HUD before implementing any voluntary transfer or series of transfers of the lender's assets which would cause the lender's Sound Capital Resources to fall below the required level. Finally, the lender must agree that if such transfer does take place without prior HUD approval, the remaining assets of the lender and any assets disbursed without such approval will be deemed to be held in trust for the benefit of HUD, and consequently, HUD would have a cause of action against any of the original principals of the lender or any other party for any transfer not made in accordance with these requirements.

(13) A statement agreeing to file at each loan closing a certification with supporting documentation that an addition has been made to the lender's dedicated account for coinsurance obligations.

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§ 252.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinsure under this part. A temporary lapse in this authority will not terminate the lender's approved coinsurer status or affect outstanding firm commitments or coinsurance in force. However, lenders are responsible for suspending issuance, extension, or reopening of commitments during these periods.

(b) Suspension or withdrawal of approval under § 252.104.

§ 252.104 Withdrawal of approval.

(a) Approval as a coinsuring lender under this part may be withdrawn or suspended for any of the following causes:

(1) Failure to maintain satisfactory Sound Capital Resources and/or dedicated account for coinsurance obligations balances;

(2) Failure to operate the program in a prudent manner or to discharge its responsibilities under any regulatory agreement, coinsurance contract, or administrative procedures including handbooks and other issuances published by the Commissioner under this part.

(3) Payment or receipt by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to or from any person who has received any consideration from another person for services related to the transaction; however, compensation may be paid for the actual performance of services approved by the Commissioner;

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect;

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan;

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender;

(7) Other reasons the Commissioner determines to be justified in accordance with Part 24 of this title or action of the Mortgagee Review Board in accordance with Part 25 of this title.

(8) Failure to comply with the provisions of Executive Order 11063, as amended, the Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968, as amended, and regulations issued under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(b) HUD may place a coinsuring lender on probation for a specified period of time for the purpose of evaluating the lender's compliance with the requirements of the coinsurance program. During the probation period the lender may continue to issue commitments for insurance, subject to conditions required by HUD. Such conditions may include, but are not limited to, submission of the processing to HUD for its approval before issuance of the commitment, increased requirements for the dedicated account for coinsurance obligations, and additional financial reports.

(c) Coinsuring lenders will be notified in writing by the Commissioner, or designee, when a probation, suspension or withdrawal action is taken. The notice will specifically state the cause, effect, and duration of the action. Lenders must comply with the conditions of the notice immediately, but may request an informal hearing on the action within 10 working days of receipt of the notice. The hearing shall be held by the Commissioner or designee. The lender shall be given the opportunity to be heard within 10 days of receipt of the request and may be represented by counsel. The Commissioner or designee will notify the lender in writing of the results of the hearing within 10 working days of the hearing and receipt of any materials. A decision to withdraw, suspend, or continue probation following a hearing constitutes final agency action.

(d) Probation, withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or commitments in effect at the time of the probation, withdrawal or suspension of approval.

(e) Serious misconduct or noncompliance with the requirements of the coinsurance program may also result in action against coinsuring lenders in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

§ 252.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6, or § 203.7(c) of this chapter, and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may require the lender to cancel the servicing agreement after giving the lender a 30-day written notice.

§ 252.106 Assignment of and participation in Coinsured Mortgages.

(a) *Assignment of coinsured mortgage.* (1) A lender may assign a Coinsured Mortgage to another lender if the following requirements are satisfied:

(i) The assignee is a HUD-approved coinsuring lender;

(ii) The lender shows good cause for the assignment;

(iii) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to HUD; and

(iv) The Commissioner gives prior written approval for the assignment and any risk allocation between the assignor and assignee.

(2) The lender must inform HUD promptly following the assignment of any coinsured mortgage. The lender will not be relieved of its obligation to pay Mortgage Insurance Premiums until HUD has received this notice.

(b) *Transfer of partial interest under participation agreement.* A partial interest in a coinsured mortgage or pool of coinsured mortgages may be transferred under a participation agreement or arrangement (such as a dec'aration of trust or the issuance of pass-through certificates) without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the coinsured mortgage or mortgages shall be held by an approved coinsuring lender, which shall for purposes of this paragraph (b), be referred to as the principal lender;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(i) The principal lender shall remain the lender of record under the contract of coinsurance;

(ii) The Commissioner shall have no obligation to recognize or do business with anyone other than the principal lender with respect to the rights, benefits and obligations of the lender under the contract of coinsurance; and

(iii) The mortgagor shall have no obligation to recognize or do business with anyone other than the principal lender or its servicing agents with respect to the rights, benefits and obligations of the mortgagor or the lender under the coinsured mortgage; and

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose:

(i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgages;

(ii) Whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and

(iii) That no insurance fund administered by HUD will pay benefits to protect against any risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(c) *Government National Mortgage Association requirements.* (1) If the coinsured mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

§ 252.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular Project. Reinsurance may be obtained for:

(1) Up to and including 50 percent of its risk;

(2) Above 50 percent; or

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure.

(b) The effect of reinsurance on the insurance benefits payable by the Commissioner is governed by § 252.820.

(c) Any reinsurance policy must name the Commissioner as contingent beneficiary where default by the lender compels the Commissioner under § 252.824 to reimburse the Government National Mortgage Association for the amount that the GNMA had to pay securities holders as a result of the lender's default in payment, subject to the ceilings provided in § 252.824.

§ 252.108 Pledging and other security arrangements.

A lender may pledge the beneficial interests in a Coinsured Mortgage as security under the terms of a reinsurance contract, trust indenture, third party guarantee agreement, or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions:

(a) The lender must retain legal title to the note and the Mortgage, subject to the security interest created, unless the title is otherwise transferred in accordance with § 252.106. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record or any successor to the lender's title to the Mortgage and mortgage note with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage or Mortgage note, or to such other person or entity servicing the Mortgage loan under § 252.105, except that the mortgagor may be directed to make payments under the Mortgage and the Mortgage note to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interests of Coinsured Mortgages backing Government National Mortgage Association (GNMA) Construction or Project Loan Certificates except as authorized by GNMA.

§ 252.109 Minimum principal loan amount.

A lender may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

§ 252.110 Limitations on individual mortgage amounts.

(a) Notwithstanding maximum mortgage limitations set forth in §§ 252.203 and 252.903, individual mortgage amounts will be limited by the level of the lender's Sound Capital Resources (as defined in § 252.102) as follows:

(1) Mortgages are limited to $10 million per case where Sound Capital Resources are $2.0 million or less;

(2) Mortgages are limited to $15 million per case where Sound Capital Resources are $2.5 million or less;

(3) Mortgages are limited to $20 million per case where Sound Capital Resources are $3 million or less; and

(4) There is no specified limit where Sound Capital Resources exceed $3 million.

(b) In the event Sound Capital Resources diminish at any time, per case mortgage limits would apply according to the above schedule.

Subpart C—Program Requirements

§ 252.201 Eligible project.

(a) Except as provided in Subpart J, to be eligible for coinsurance under this part a Project must be newly constructed or substantially rehabilitated. A Project must conform to standards established by the Commissioner, including limitations on commercial space, and comply with all applicable zoning or deed restrictions, and applicable building and other government regulations.

(1) If a nursing home or intermediate care facility, a Project shall consist of not fewer than 20 beds after completion of the construction or rehabilitation. The nursing home or intermediate care beds must be clearly separate from any board and care beds in the facility.

(2) If a board and care home, a Project shall contain not fewer than five residential accommodations after completion of the construction or substantial rehabilitation. A maximum ratio of four persons per full bathroom shall be permitted in each board and care home. Group dining facilities shall be available. Kitchen facilities are not required in each accommodation or per full bathroom. Only one to four person occupancy will be permitted in each bedroom accommodation. A board and care home owner must also meet State and local occupancy requirements permitting fewer than four persons per accommodation or per full bathroom. The board and care beds will be clearly designated and separate from any nursing home or intermediate care beds in the facility.

(b) The Commissioner must review all projects proposed for coinsurance under this part for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities as set forth in Part 50 of this title.

(c) No insurance will be made available under this part for any building located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The jurisdiction in which the project is located is participating in the National Flood Insurance Program and is subject to 44 CFR Parts 59 through 79 or

(2) Less than a year has passed since FEMA notification regarding such hazards, and flood insurance is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) No insurance will be made available under this part with respect to a property within the Coastal Barriers Resources Systems established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

(e) Wherever applicable, projects under this part must comply with the National Historic Preservation Act (16 U.S.C. 470).

§ 252.202 Eligible mortgagors; Disclosure.

(a) Public, nonprofit, and proprietary mortgagors approved by the coinsuring lender in accordance with standards established by the Commissioner are eligible under this part. The mortgagor must possess the legal powers necessary and incidental to operating the Project except where it leases the Project to a qualified operator, in which case the lessee shall be approved by the coinsuring lender and must possess the legal powers necessary and incidental to operating the Project.

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[53 FR 33736, Aug. 31, 1988, as amended at 54 FR 39697, Sept. 27, 1989]

§ 252.203 Maximum mortgage limitations.

The maximum mortgage coinsurable under this part is the lowest of the amounts determined under the following limits:

(a) *Value limit.* An amount not exceeding 90 percent of the lender's estimate of value of the project, including major movable equipment to be used in its operation.

(1) The final estimate of value for the purpose of this section results from consideration of three indicators of value:

(i) *The estimated market value of the project by capitalization.* Capitalization will use net income attributable to land, building improvements and major movable equipment (not business operations), capitalized at rates extracted from market transactions involving comparable properties.

(ii) *The estimated market value by direct sales comparison.* Market value by direct sales comparison will be estimated by comparison of the subject property with competing properties recently sold, using at least two other properties for the comparison.

(iii) *The total estimated replacement cost of the project* (without deducting depreciation). The total estimated replacement cost of the project (before depreciation) provides only an upper limit. The final estimate of value must be between that indicated by capitalization and that indicated by direct sales comparison, but may not exceed the total estimated replacement cost of the project.

(2) In the event the Mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the Mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The net projected project income available for payment of debt service is determined by reducing the estimated gross income of the project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacement, taxes and distributions, and by the return attributable to business operations. The maximum Coinsurable Mortgage cannot exceed the amount that could be amortized by 90 percent of net projected project income.

(c) *Rehabilitation projects—additional limits.* In addition to the limits of paragraphs (a) and (b) of this section, the following additional limits apply to projects to be substantially rehabilitated.

(1) Where the property is owned by the mortgagor in unencumbered fee simple or is subject to existing indebtedness to be refinanced by part of the proceeds of the coinsured mortgage, the maximum coinsurable mortgage may not exceed the sum of:

(i) The cost of rehabilitation plus

(ii) The lesser of the existing indebtedness or 90 percent of the lender's estimate of the value of the property before rehabilitation and installation of major movable equipment.

(2) Where the property is to be acquired and the purchase price to be financed with part of the proceeds of the coinsured mortgage, the maximum coinsurable mortgage may not exceed 90 percent of the sum of:

(i) The cost of rehabilitation plus

(ii) The lesser of the actual purchase price of the property or the lender's estimate of the value of the property before rehabilitation and installation of major movable equipment.

§ 252.204 Maximum interest rate.

The interest rate in a commitment to coinsure, including a commitment for Mortgage increase, shall be at such rate as may be agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment. The interest rate may not be increased after initial endorsement (insurance of advances) or start of construction (insurance upon completion), except that where a Mortgage increase is requested, processed, and approved, a higher rate may be applied to the amount of the increase only.

§ 252.205 Term of the mortgage.

The Mortgage term may not exceed the lesser of 40 years from the date of first payment to principal or 75 percent of the lender's estimate of the project's remaining economic life.

§ 252.206 Lender's fees and premiums.

(a) The lender may collect from the mortgagor, and include in the coinsured mortgage, an application fee, financing fee, permanent placement fee, and inspection fee. These fees may not exceed the maximums approved by the Commissioner. The lender may collect additional fees, approved by the Commissioner, that are outside the coinsured mortgage and that must be disclosed at initial endorsement (insurance of advances) or endorsement (insurance upon completion). In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under section 232 of the Act.

(b) The coinsuring lender may collect a lender's premium of up to .25 percent per year of the average outstanding principal balance of the Mortgage (without regard to delinquent payments or prepayments) beginning not earlier than 12 months after the date of initial endorsement (insurance of advances) or the date of endorsement (insurance upon completion). This premium will be for the account of the lender or an insurer of the lender.

§ 252.207 Coinsurance of Mortgages in lender's portfolio.

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceding the submission of the application to the lender.

(2) Refinancing of portfolio loans makes up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period; and

(3) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(2) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole involvement is servicing.

(3) Mortgages in which no equity is removed.

§ 252.208 Nondiscrimination in housing and employment.

The mortgagor shall certify to the lender and to the Commissioner that, as long as the mortgage is coinsured under this part:

(a) Neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, sex, religion, or national origin;

(b) Any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed;

(c) Civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification;

(d) It will comply with title VIII of the Civil Rights Act of 1968, as amended, and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin; administer the Project and related activities to further fair housing in an affirmative manner; and comply with State and local fair housing laws;

(e) It will comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin in housing and related facilities provided with Federal financial assistance; and

(f) It will not discriminate because of race, color, religion, sex, or national

origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 12246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements over the life of the mortgage.

(g) Marketing will be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan.

(h) It will not sell the project as long as the mortgage is coinsured under this part, unless the purchaser agrees to comply with the requirements of this section and with applicable transfer of physical asset requirements.

§ 252.209 Labor standards and prevailing wage requirements.

With the exception of mortgages coinsured under Subpart J of this part, the following labor standards and prevailing wage requirements shall be applicable to Mortgages coinsured under this part. The Commissioner shall assure compliance with those standards and requirements and the lender must obtain, evaluate, and submit any information or certifications required by the Commissioner to assist the Commissioner in carrying out this function.

(a) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project to be constructed or substantially rehabilitated under this part shall comply with all applicable labor standards and provisions of 29 CFR Parts 1, 3 and 5, issued by the Secretary of Labor.

(b) *Ineligible advances.* No advance under the Mortgage shall be eligible for coinsurance after the lender determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

(c) *Wage certificate.* No advance under any Mortgage shall be coinsured under this part unless there is filed with the application for the advance, and no mortgage shall be coinsured under this part unless there is filed with the Commissioner after completion of the construction or Substantial Rehabilitation, a certficate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or Project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor before the beginning of construction and after the date of filing of the application for insurance.

(d) *Waiver of compliance with contract requirements—nonprofit mortgagors.* In the case of a nonprofit mortgagor, the Commissioner may waive the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction or rehabilitation of the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and where the Commissioner determines that full credit has been received by the mortgagor for any amounts saved through such donated services.

Subpart D—Processing and Commitment

§ 252.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraphs (b), (d) and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

Certain functions are retained by Commissioner. The lender must it any information or certifica- required by the Commissioner to it determinations of compliance requirements concerning:

Previous participation of the ipals of the Mortgagor, general actor, consultant, and manage- agent in accordance with the ious Participation and Clearance ew Procedures of 24 CFR 200.210 igh 200.218;

Environmental impact under the onal Environmental Policy Act of and related laws and authorities orth in 24 CFR Part 50;

Equal opportunity considerations ie development and operation of proposed project in accordance the provisions of Executive Order 3, as amended, the Equal Credit ortunity Act, Title VIII of the Rights Act of 1968, as amended, regulations issued under these au- ities.

The National Historic Preserva- Act, 16 U.S.C. 470, where applica-

Market/submarket review to de- ine the impact upon that market the addition of the proposed thcare facility.

The intergovernmental review edures of 24 CFR Part 52.

The lender must also submit any rmation required by the Commis- er for tracking or monitoring pur- s.

The Commissioner's authorized artmental representative must en- e the Mortgage for coinsurance.

With the exception of mortgages sured under Subpart J of this , the Commissioner retains respon- ity for enforcement of labor stand- and prevailing wage requirements out in § 252.209. The Commissioner perform all functions under 2.209 except that he may delegate the lender information collection ., payroll review and routine inter- ws) or other routine administration enforcement functions, subject to nitoring by the Commissioner.

The precommitment review pro- ure set forth in this paragraph ap- s to any application for mortgage surance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after April 26, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by the precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of April 26, 1990 are limited as follows:

(i) Conditional commitments for new construction or substantial rehabilitation may be granted one 60-day extension;

(ii) Firm commitments for insurance of advances for new construction or substantial rehabilitation may be granted two 60-day extensions;

(iii) Firm commitments for insurance upon completion may not be extended;

(iv) For existing projects, only one 90-day extension may be granted for a conditional commitment and only one 60-day extension may be granted for a firm commitment. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension;

(iv) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

[53 FR 33736, Aug. 31, 1988, as amended at 55 FR 11347, Mar. 27, 1990]

§ 252.302 Processing and commitment.

(a) After acceptance of an application for a commitment to coinsure, the lender will determine the maximum coinsurable Mortgage, review plans and specifications for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 252.301(b);

(2) A waiver, where needed, of the approved high-cost factor under § 252.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 252.301(f).

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments, assuring commitments are updated when appropriate, and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

[53 FR 33736, Aug. 31, 1988, as amended at 55 FR 11348, Mar. 27, 1990]

§ 252.303 Required certificates.

(a)(1) Except as provided in paragraph (a)(2) of this section, every application for coinsurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which the project is or will be located, designated in accordance with section 604(a)(1) of section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(i) There is need for the project.

(ii) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care facility or combined home and facility as required by paragraph (a)(1)(i) of this section, the lender shall not coinsure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that:

(i) Is prepared in accordance with the principles established by the

American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds, demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility;

(iii) Is addressed to and acceptable to the Secretary in form and substance; and

(iv) In the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for coinsurance and is approved by the Secretary.

The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

(b) In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the certification of need requirement of paragraph (a)(1)(i) of this section, provide the Secretary with written support identifying the need for the facility or home.

(c) Every application for coinsurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1616(e) of the Social Security Act.

(d) No mortgage shall be coinsured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

§ 252.401 Insurance of advances or insurance upon completion; applicability of requirements.

Either insurance of advances or insurance upon completion procedures may be used under this part. In insurance upon completion cases, only the permanent loan is coinsured and a single endorsement is required after satisfactory completion of construction or Substantial Rehabilitation. In insurance of advances cases, progress payments approved by the lender are also coinsured and both an initial and final endorsement on the Mortgage are required. The requirements of §§ 252.404 through 252.406 apply in either case and the Mortgage and other closing documents must meet the requirements of Subpart F.

§ 252.402 Insurance of advances.

(a) *Financial requirements.* (1) Before initial endorsement, the Mortgagor (other than a Nonprofit Mortgagor) must make a working capital deposit of two percent of the face amount of the Mortgage. The deposit must be made to the lender or be controlled by the lender in a depository acceptable to it. Unless the Commissioner approves exceptions, this deposit may be used only for equipping and rent-up of the project and, during construction, for allocation by the lender to accruals for taxes, ground rents, MIP, property insurance premiums, and assessments required by the terms of the Mortgage.

(2) Before initial endorsement, the Mortgagor must deposit with the lender cash that the lender deems sufficient, when added to the proceeds of the insured Mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to construction of the project. This cash will be held by the lender under an appropriate agreement. The agreement will require all cash held to be disbursed for work and material on the physical improvements, and for other charges and

expenses to be paid when due, before the advance of any Mortgage money. If all or part of the funds required under this paragraph (a)(2) are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, Mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of the grant or loan funds, to pay cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the Mortgagor, that portion must be disbursed in full before the disbursement of the Mortgage proceeds.

(3) Charges to be paid by the Mortgagor in connection with the financing that are in excess of the initial service charge and that are acceptable to the Commissioner must be deposited with the lender in cash at or before initial endorsement. Alternatively, a note, in a form prescribed by the Commissioner, may be accepted by the lender. The note must evidence the obligations of a party other than the Mortgagor and may not be secured by the assets of the Mortgagor entity.

(4) The lender must require assurance of completion of offsite public utilities and streets. (An exception is made where a public body has agreed to install offsite improvements without cost to the Mortgagor and this agreement is acceptable to the lender.) The assurance must be either a cash escrow deposit or the retention by the lender at initial closing of a specified amount of the Mortgage proceeds allocated to land in the project analysis. If a cash escrow is used, it must be deposited with the lender or a depository designated by the lender. The lender may also require a surety bond.

(5) The lender may accept, in lieu of a cash deposit required by paragraphs (a)(1), (3) and (4) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State, or local governmental agency or instrumentality, the lender may accept for the portion so provided, in lieu of a cash deposit required by paragraph (a)(2) of this section, either an unconditional irrevocable letter of credit issued to the lender by a banking institution or an agreement, as described in § 207.19(c)(7) of this chapter, entered into by HUD, the governmental agency or instrumentality, the Mortgagor and the lender. The lender of record may not be issuer of any letter of credit referred to in this paragraph (a)(5) without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the lender must provide cash equivalent to the undrawn balance under the letter of credit.

(b) *Building loan agreement.* Before initial endorsement, the lender and Mortgagor must execute a building loan agreement in a form approved by the Commissioner. This agreement sets out the terms and conditions under which progress payment may be advanced during construction. To be covered by coinsurance, each progress payment must be approved by the lender and must contain a certificate that the prevailing wage requirements of § 252.209 have been met.

(c) *Insured advances of components stored off-site.* The provisions of 24 CFR 232.57 apply to projects coinsured under this part, except that the lender performs the functions otherwise performed by the Commissioner.

(d) *Assurance of completion.* (1) The Mortgagor must furnish assurance of completion of the Project. The lender may establish more stringent criteria, but, at minimum, must require assurance by bonds issued by a surety company acceptable to the lender, pursuant to requirements established by the Commissioner for payment and performance each in the amount of 100 percent of the established construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent (or 25 percent where the structure contains an elevator and is four stories or more) of the amount of the estimated construction or rehabilitation cost. An unconditional and irrevocable letter of credit may be substituted for this cash deposit under the same terms and conditions as pro-

vided in paragraphs (a)(5) of this section.

(2) Alternatively, where the estimated cost of construction or rehabilitation is $500,000 or less, the lender may accept assurance of completion in the form of a personal indemnity agreement executed by the controlling principals of the general contractor.

§ 252.403 Insurance upon completion.

A commitment to coinsure upon completion prescribes a designated period during which the Mortgagor must start construction or Substantial Rehabilitation. If construction or rehabilitation is started as required, the commitment will be valid for an additional period no longer than the lender's estimate of the construction period plus six months, except as extended as provided § 252.302(c).

§ 252.404 Requirements applicable to both insurance of advances and insurance upon completion cases.

(a) *Latent defects escrow.* (1) In insurance upon completion cases, the Mortgagor must make a cash escrow deposit at endorsement of two and one-half percent of the principal amount of the mortgage, or provide a surety bond of 10 percent of the lender's estimate of the cost of construction or Substantial Rehabilitation, as a latent defects escrow. An unconditional and irrevocable letter of credit may be substituted for this cash escrow deposit under the same terms and conditions as provided in § 252.402(a)(5). This escrow must be retained by the lender for 15 months after substantial completion.

(2) In insurance of advances cases, if a completion assurance agreement referred to in § 252.402(d) was used at initial endorsement, an amount equal to two and one-half percent of the construction contract must be retained in cash or a letter of credit for a period of 15 months following substantial completion as a latent defects escrow.

(b) *Inspections during construction.* The lender must inspect projects under this part at such times during construction or Substantial Rehabilitation as the lender determines, within standards established by the Commissioner. The inspections must be conducted to assure compliance with the contract documents.

(c) *Cost certification requirements—Mortgagor.* (1) Before initial endorsement (insurance of advances) or start of construction (insurance upon completion) the Mortgagor and the lender must enter into an agreement satisfactory to the Commissioner that precludes any excess of Mortgage proceeds over statutory and regulatory limitations. In this agreement, the Mortgagor must also disclose its relationship with the builder, including any collateral agreement, and agree to:

(i) Enter into a construction contract that:

(A) Complies with the requirements of § 232.81 of this chapter (as to whether the contract should be lump sum or cost-plus) and

(B) Is approved by the lender and acceptable to the Commissioner as to form and content;

(ii) Execute a certificate of actual costs when all physical improvements are complete; and

(iii) Reduce the Mortgage if necessary in accordance with § 252.405.

(2) The provisions of paragraph (c)(1) of this section relating to disclosure and the requirement of a construction contract do not apply where the Mortgagor and the general contractor are one and the same.

(3) If the Mortgagor, the general contractor, or their officers, directors, or stockholders have any interest, financial or otherwise, as defined by the Commissioner, in any subcontractor, material supplier, or equipment lessor, the Mortgagor must disclose the identity of interest before start of the construction. The lender may approve the use of a subcontractor, material supplier or equipment lessor having an identity of interest if the amounts paid to that entity do not exceed the rate prevailing in the locality for similar types of labor and materials.

(4) The Mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, must be submitted to the lender when the improvements are completed to the satisfaction of the lender and before final endorsement (or before endorsement in the

case of insurance upon completion). The certificate must show the actual cost to the Mortgagor of:

(i) The cost-plus construction contract or the lump sum construction contract or the cost of the construction of the Project where the Mortgagor and the general contractor are one and the same and no construction contract is executed;

(ii) The architect's fee;

(iii) The offsite public utilities and streets not included in § 252.402(a)(4) of this part.

(iv) The organizational and legal expenses; and

(v) Other items of expense approved by the Commissioner.

(d) *Cost certification requirements—general contractor.* (1) Where a cost-plus form of contract is used, the Mortgagor must also submit to the lender a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract, exclusive of the builder's fee;

(2) Where there is a cost-plus contract and the lender determines that an identity of interest (as defined by the Commissioner) exists between the Mortgagor or general contractor or any of their officers, directors, stockholders, or partners and any subcontractor, material supplier, or equipment lessor, the lender may require the Morgagor to submit a certification by the subcontractor, material supplier, or equipment lessor, as to the actual costs paid for labor, materials, subcontractors and overhead. This certification must be in a form prescribed by the Commissioner.

(e) *Exclusions.* The certifications required by paragraphs (c) (4) and (d) of this section may not include any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Mortgagor or any of their officers, directors, stockholders or partners.

(f) *Records.* The Mortgagor must maintain adequate records of all costs of any construction or other cost items that do not represent work under the general contract and, in the case of a lump sum contract, must require the builder to keep similar records and, if requested by the lender or the Commissioner, must make these records (including any collateral agreements) available for examination, including examination by the Inspector General of HUD or the Comptroller General.

(g) *Certificate of public accountant.* In all Projects, cost certifications must be supported by an audit of the cost certification statement and accompanying financial statements by an independent Certified Public Accountant or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970. The audit must include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent necessary to verify that they present fairly the actual costs.

(h) *Requisites of agreement and certification.* Any agreement, statement or certification required by this section must specifically state that it has been prepared for the purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as true.

(i) *Cost certification incontestable.* Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the Mortgagor.

§ 252.405 Lender review of mortgage amount.

When the cost certifications submitted under § 252.404 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary and whether any requests for a mortgage increase are approvable.

§ 252.406 Application of net income received before beginning of amortization.

(a) If prior to the beginning of amortization, net income, as defined by the Commissioner, is received as a result of the operation of the Project, such

net income, to the extent determined by the lender, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset construction costs approved by the lender.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement.

(b) The provisions of paragraph (a) of this section shall not be applicable to a mortgagor that is a private nonprofit corporation or association.

§ 252.407 Endorsement by Commissioner.

Before start of construction in insurance of advances cases, and in all cases after completion of construction or Substantial Rehabilitation and completion of the lender's review of the Mortgage amount, the lender will hold a closing and submit required documentation to the Commissioner or the Commissioner's authorized Departmental representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, *i.e.*, the date of HUD endorsement of the Project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 252.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

Subpart F—Mortgage and Closing Requirements

§ 252.501 Mortgage requirements—real estate.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 252.3(n).

(a) The mortgage must be on real estate held:

(1) In fee simple; or

(2) Under a lease for not less than 99 years which is renewable; or

(3) Under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, an Indian, an Indian tribe, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such a lease, provided that the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property must be held by an eligible Mortgagor and must, at the time the mortgage is coinsured, be free and clear of other liens except those approved by the lender in accordance with § 252.504.

(c) The mortgage must cover the entire property included in the facility.

§ 252.502 Title.

(a) *Eligibility of title.* Title to the mortgaged property must be vested in the Mortgagor on the date the Mortgage is filed for record.

(b) *Title evidence.* Before coinsurance of the Mortgage, the Mortgagor must furnish the lender with a survey, satisfactory to the lender, of the Mortgaged property and a title insurance policy covering the property. If, for reasons that are satisfactory to the lender, title insurance cannot be furnished, the Mortgagor must furnish evidence of title in accordance with paragraph (b)(2) of this section. The types of title evidence are:

(1) A title insurance policy issued by a company, and in a form, satisfactory to the lender. The policy must name the lender and the Commissioner as the insureds, as their interests may appear. The policy must also provide that, upon acquisition of title by the lender, it will become an owner's policy running to the lender.

(2) An abstract of title satisfactory to the lender, prepared by an abstract company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the lender as to the quality of the title, signed by an attorney experienced in the examination of titles.

§ 252.503 Mortgage and note provisions.

(a) The mortgage and note must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without prior written approval of the Commissioner.

(b) The Mortgage must be executed by an eligible Mortgagor.

(c) The Mortgage must be a first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The note must provide for equal monthly payments of interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by the Mortgagor and lender and acceptable to the Commissioner.

(e) The lender will determine the date of first payment to principal. The lapse of time between completion of the project and beginning of amortization must not be longer than the lender determines, in accordance with standards established by the Commissioner, to be necessary to obtain sustaining occupancy.

(f)(1) The Mortgage must provide that all monthly payments made by the Mortgagor to the lender be added together into a single payment made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgagor or for the account of the Mortgagor to the following items in the order listed:

(i) MIP under Contract of Coinsurance;

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(iii) Interest on the Mortgage; and

(iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i) Partial or full prepayment of the mortgage is subject to the following standards and restrictions.

(1) *Proprietary facilities.* In the case of the mortgagor operating a proprietary facility, the following provisions shall be applicable:

(i) *Prepayment privilege.* Except as otherwise provided in paragraph (i)(3), the mortgagor may prepay the mortgage in whole or in part upon any interest payment date after giving to the lender 30 days' notice in writing in advance of its intention to so prepay.

(ii) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and the coinsuring lender, in accordance with standards adopted by the Commissioner. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(2) *Nonprofit facility.* In the case of a facility operated by a nonprofit corporation or association, the following provisions shall be applicable:

(i) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained as he may prescribe.

(ii) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balances as recast over the re-

maining portion of the original mortgage term.

(iii) *Optional provision.* The mortgage may, if required by the lender, contain a provision that prior to maturity and with the approval of the Commissioner, partial prepayments may be made after 30 days' written notice to the lender on any principal payment date. A reasonable charge may be allowed as agreed upon between the mortgagor and the lender in accordance with standards adopted by the Commissioner.

(3) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the lender as to terms, amount, and conditions in accordance with standards adopted by the Commissioner.

(j) The note may provide for the collection by the lender of a late charge, not to exceed four percent of each payment to interest and principal that is more than 15 days late, or such other charges as may be agreed to by the lender and the Commissioner, to cover the extra expense of handling delinquent payments. Late charges must be separately charged to and collected from the Mortgagor and may not be deducted from any total monthly payment.

(k) The mortgage must contain a covenant prohibiting the use of the property for any purpose other than as a residential care facility eligible for coinsurance under this part.

(l) The mortgage must contain a covenant, accepable to the Commissioner, that binds the mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the Commissioner or the lender. The amount must comply with the coinsurance clause applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be in the amount estimated by the lender after completion of the project. A standard mortgagee clause making loss payable to the lender and the Commissioner as their interests may appear must be included in the insurance policy. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. If the mortgagor does not obtain the required insurance, the lender must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

§ 252.504 Mortgage lien and other obligations.

The mortgagor and the lender must certify at endorsement of the loan for insurance, and the lender must determine:

(a) That the mortgage is a first lien upon and covers the entire Project, including the equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed, and the equipment financed with mortgage proceeds, are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the lender in accordance with standards established by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the Project or the purchase of the equipment financed with mortgage proceeds.

§ 252.505 Regulatory agreement.

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner coinsures the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines that the additional lender controls or require-

ments do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

§ 252.506 Other closing documents.

The lender will require execution of such other closing documents as the Commissioner may require.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

§ 252.601 Requirements applicable to all projects.

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only in the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administrative procedures for previous participation clearance and Transfers of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits;

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.

(d) The Mortgagor may not resign or withdraw from the Project until the lender has approved a substitute Mortgagor.

Subpart H—Program Relating to Project Operation

§ 252.701 General.

In order to be eligible for the benefit of coinsured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

§ 252.702 Reserve for replacements and general operating reserve.

(a) The Mortgagor must establish and maintain a reserve for replacements to cover the cost of major repairs to and replacement of structural elements, mechanical equipment and major movable equipment of the facility. This reserve will be held and administered by the lender only as provided in the regulatory agreement and Commissioner's administrative procedures.

(b) [Reserved]

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements must be invested in United States Treasury securities, securities issued by a Federal agency, or deposits that are insured by an agency of the Federal Government.

§ 252.703 Charges for facilities and services.

(a) The Mortgagor will determine charges, taking into account facilities and services offered by the Project.

(b) The Mortgagor may not collect from residents or prospective residents an admission fee, founder's fee, life care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.

§ 252.704 Use of project funds.

(a) The Mortgagor must deposit all rents and other receipts of the project in the name of the project in accounts that are fully insured as to principal by an agency of the Federal Government. Project funds in excess of those needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may use project funds only for:

(1) Payment of Mortgage obligations;

(2) Payment of reasonable expenses necessary to the proper operation and maintenance of the project;

(3) Deposits to the reserve for replacements and other required reserves;

(4) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(5) Distributions of Surplus Cash permitted under § 252.705;

(c) The Mortgagor may not use project funds to liquidate liabilities related to the construction of the project, other than the Coinsured Mortgage, unless the lender authorized this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the Project. The trust account must be held in the name of the Project and the balance in the account must as all times equal or exceed the Project's liability for residents' security deposits. The owner must comply with any State or local laws regarding investment of security deposits and the Distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the Project or the Project residents.

§ 252.705 Distributions and residual receipts.

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative requirements.

(b) *Proprietary Mortgagors.* (1) Distributions may be paid only from Surplus Cash that exists as of the end of a semiannual or annual fiscal period.

(2) Initial Distributions may be paid only after construction has been completed and the Mortgagor has submitted the cost certifications required by § 252.402.

(3) No Distribution may be paid from borrowed funds, or when payments due under the note, Mortgage, or regulatory agreement have not been made.

(4) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so;

(i) The Mortgagor has not satisfactorily responded to any lender or HUD on-site review report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made;

(ii) The lender determines and gives the owner written notification that the project has significant uncorrected physical deficiencies; or

(iii) There is a covenant default (as defined in § 252.806(b)) under the provisions of the Mortgage or the regulatory agreement.

(c) *Nonprofit and public mortgagors.* No distributions are permitted on projects owned by nonprofit or public mortgagors. (1) Any Surplus Cash generated by such project must be deposited in the Residual Receipts account with the lender within 60 days after the end of each fiscal year in which the Surplus Cash is generated.

(2) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(3) The lender must invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner, or by the lender in accordance with the Commissioner's administrative requirements.

(4) When the contract of coinsurance is terminated any funds remaining in the Residual Receipts account must be distributed in accordance with the Commissioner's administrative requirements.

§ 252.706 Project management.

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commis-

sioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner and lender may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligation to pay) fees for management services.

(e) Establish and maintain the Project's books, accounts and records in accordance with the Commissioner's and lender's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 31, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports; properly certified copies of minutes of meetings of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity; and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's or HUD's on-site review reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In advertising accommodations and services and in admitting residents, adhere to civil rights and equal opportunity requirements set forth in § 252.208.

Subpart I—Contract Rights and Obligations Mortgage Insurance Premiums

§ 252.801 MIP in insurance of advances cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before the intial endorsement of the Mortgage for coinsurance, the lender must collect a MIP from the Mortgagor equal to one percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of initial endorsement, the lender must, before each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, collect from the Mortgagor an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Before the first principal payment, the lender must collect from the Mortgagor an amount equal to 0.5 percent of the average outstanding principal balance of the Mortgage for the year following the first principal payment.

(4) Beginning with the first principal payment and continuing until the Coinsurance Contract terminates, the lender must collect and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal that will be outstanding during the upcoming year. No adjust-

nents may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(5) The MIP required under paragraphs (a) (1) and (2) of this section may be included in the Mortgage. The Mortgagor must pay the MIP required under paragraphs (a) (3) and (4) of this section from its own funds.

(b) *Payment of MIP by the lender.* (1) At initial endorsement, the lender must pay to the Commissioner an initial MIP equal to .65 percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of the initial endorsement, the lender must, on each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, pay to the Commissioner an additional MIP qual to 0.5 percent of the original Mortgage amount.

(3) Following final endorsement, the Commissioner will adjust the MIP so that it equals .65 percent per year of the average outstanding principal balance for the year following the date of initial endorsement plus 0.5 percent per year of the average outstanding principal balance for the period from the first anniversary of initial endorsement to the date of the first principal payment. If the adjusted amount is less than the amount previously paid by the lender, the Commissioner will refund the excess amount to the lender for application to the mortgagor's account.

(4) On the date of the first principal payment and each year thereafter on the anniversary of the date on which the first principal payment was due, and continuing until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance of the Mortgage for the 12 months following the date the premium becomes payable. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 252.804.

§ 252.802 MIP in insurance upon completion cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor a MIP equal to 0.5 percent per year of the average outstanding principal balance of the Coinsured Mortgage from the date of the endorsement to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor monthly MIP sufficient to accumulate and place in escrow 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.5 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.5 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or

Mortgage prepayments except as provided in § 252.804.

§ 252.803 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;

(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

§ 252.804 Pro rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

§ 252.805 Late charges—MIP.

(a) If the Commissioner receives a MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives a MIP payment more than 30 days after the later of the billing date or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set in conformity with the Treasury Fiscal Requirements Manual.

Protection of Mortgage Security

§ 252.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

Delinquency and Default Under the Mortgage

§ 252.807 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must give the Commissioner and the mortgagor written notice of the delinquency. This notice must include the information required by the Commissioner's administrative procedures. The lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

§ 252.808 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

§ 252.809 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments.

when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

§ 252.810 Notice of default.

If a default (as defined in § 252.808) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the Commissioner, the lender must submit this notice monthly on a form prescribed by the Commissioner until the default has been cured, the lender has acquired title to the property, or the coinsurance contract has been terminated.

§ 252.811 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this section. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 252.821(b) in any subsequent claim for insurance benefits, if the lender complies with the conditions set forth in this section and the notice requirements set forth in §§ 252.810 and 252.815. The lender must service delinquent loans in accordance with the Commissioner's administrative requirements.

(1) *Temporary adjustment of Mortgage payments.* Without obtaining the Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative requirements) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) *Withdrawal from the reserve for replacements.* If the Mortgage is more than 25 days delinquent, the lender may withraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) *Suspension of deposits to the reserve for replacements.* The lender may suspend up to six month's reserve deposits for up to six months during any 36 month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) *Recasting the Mortgage.* The lender may recast delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

§ 252.812 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

TERMINATION

§ 252.813 Termination of coinsurance contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefits;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage.

(b) The Contract of Coinsurance may, at the option of the Commissioner, be terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage which does not meet the requirements of § 252.106.

(c) When the Coinsurance Contract is terminated, all of the rights and obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

§ 252.814 Notice and date of termination by Commissioner.

The Commissioner will notify the lender that the contract of coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 252.813 occurs.

CLAIM PROCEDURE AND PAYMENT OF INSURANCE BENEFITS

§ 252.815 Notice of election to acquire property and file a claim.

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that: (a) the lender and the Mortgagor are diligently pursuing reinstatement of the Mortgage, and (b) reinstatement of the Mortgage and resolution of the problems that led to the default are feasible.

§ 252.816 Acquisition of property.

Unless the Commissioner has given the lender a written extension, within 30 days after submitting the notice required by § 252.815, the lender must institute action either to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management, as set forth in the regulatory agreement and the Commissioner's administrative procedures.

§ 252.817 Deed in lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a covenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

§ 252.818 Disposition of property and application for insurance benefits.

(a) After the acquisition of marketable title to the property, the lender must obtain two appraisals of the property performed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use. The higher of the two appraisal values shall be deemed the appraisal value for purposes of this subpart.

(b) After the lender sells the property, or after the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 252.820. The lender must file the claim no later than 15 days after the sale, or expiration of the 12-month period, whichever is applicable, or Mortgage interest will be curtailed in accordance with § 252.821(b).

(c) The lender must file the claim on a form approved by the Commissioner and must state the sales price and the income and expenses incurred in connection with the acquisition, repair, operation, and sale of the property. The lender must also submit evidence in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a) of this section, and ledger records and documentation for all accounts relating to the Mortgage transaction.

(d) If the property has not been disposed of at the time of the lender's request for payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales price.

§ 252.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply, except that the debentures will be dated as of the date of settlement of the claim.

§ 252.820 Amount of payment.

(a) The basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed-in-lieu of foreclosure;

(2) Plus all items set forth in § 252.821;

(3) Less all items set forth in § 252.822.

(b) The Commissioner will pay insurance benefits equal to 85 percent of the amount computed under paragraph (a) of this section if the lender:

(1) Has obtained no insurance of its coinsurance risk,

(2) Has insured 50 percent or less of its coinsurance risk or

(3) Is a State Housing Agency eligible as a lender under § 203.7(c) of this chapter that obtained reinsurance from an authorized public mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 72.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either more than 50 percent of its coinsurance risk or that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance obtained by the lender changes. If reinsurance is increased after initial or final endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be

increased if reinsurance is reduced or cancelled after final endorsement.

§ 252.821 Items included in payment.

In computing insurance benefits, the following items will be added to the amount described in § 252.820(a)(1):

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default. However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of the insurance benefits. However, if the lender fails to meet any of the requirements of §§ 252.810, 252.815, 252.816, or 252.818(b), within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late.

(c) An amount not in excess of two-thirds of the costs actually paid by the lender and approved by the Commissioner of acquiring the property. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Ordinary and necessary preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Ordinary and necessary expenses in connection with the sale of the property.

§ 252.822 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 252.820(a)(1):

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure;

(b) All amounts received by the lender on account of the Mortgage after the institution of foreclosure proceedings or the acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract;

(c) All cash or funds related to the mortgaged property that the lender holds (or to which it is entitled) including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral funding a GNMA Deposit Agreement relating to the lender-issuer loss exposure during the GNMA Indemnity Period;

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project or the appraised value of the project as provided in § 252.818, as follows:

(1) If the lender disposes of the Project through a negotiated sale, the amount deducted will be the higher of the sales price or the appraised value.

(2) If the lender disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted will be the sales price, even if it is lower than the appraised value.

(3) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value; and

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

§ 252.823 [Reserved]

REMEDIES FOR DEFAULT BY A LENDER-ISSUER UNDER THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA) MORTGAGE-BACKED SECURITIES PROGRAM

§ 252.824 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a coinsured loan, the Commissioner will reimburse the Association for the amount the Association must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 25 percent or 37.75 percent (whichever is appropriate) of the amount computed under § 252.820, plus the amount referenced in § 252.822(a). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

§ 252.825 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the Commissioner may request that the Mortgagee Review Board withdraw approval of the lender-issuer as HUD-approved Mortgagee, under the provisions of Part 25 of this title.

§ 252.826 HUD recourse against lender-issuer.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the lender-issuer will be liable for reimbursing the Commissioner for the payments.

§ 252.827 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of § 252.106, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insur-

ance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 232. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR Part 232, except that any payment will be made in cash instead of debentures.

§ 252.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

(a) If, as a result of a default by a lender-issuer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay any amount owed to a securities holder, GNMA as substitute lender-issuer shall be entitled to file a claim for and to receive coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if the defaulting lender-issuer has acquired legal title to property previously covered by a coinsured mortgage ("coinsured property") but has not received coinsurance benefits under this subpart, and if the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. Such a claim may be filed by GNMA notwithstanding the requirements of § 252.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title, or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment pursuant to this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders exceeds the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, then the Commissioner shall reimburse GNMA for such additional amount in accordance with § 252.824(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage followng the lender-issuer's acquisition of legal title to the underlying coinsurance property on behalf of securities holders and GNMA. Such assignment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to it. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a) if the Commissioner is required to pay coinsurance proceeds under this subpart to any party other than GNMA with respect to the Coinsured Mortgage.

Subpart J—Coinsurance of Mortgages Covering Existing Projects

§ 252.901 Mortgages covering existing insured projects eligible for coinsurance.

Notwithstanding the generally applicable requirement that mortgages be insured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for coinsurance, a mortgage executed in connection with the purchase or refinancing of an existing Project covered by a mortgage insured by the Commissioner may be coinsured under this subpart pursuant to section 223(f) of the Act. A mortgage coinsured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

§ 252.902 Eligible project.

(a) Notwithstanding the requirements set forth in § 252.201, existing Projects covered by a mortgage insured by the Commissioner (with such repairs and improvements as are determined by the lender to be necessary) are eligible for coinsurance under this subpart. The Project must not require substantial rehabilitation as defined in § 252.3 and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for coinsurance. In addition:

(b) The Project must presently be at sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the coinsuring lender, before endorsement of the Project for coinsurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for coinsurance, in an amount, and under an agreement, approved by the coinsuring lender in accordance with standards established by the Commissioner.

§ 252.903 Maximum mortgage limitations.

Notwithstanding the maximum mortgage limitations set forth in § 252.203, a mortgage within the limits set forth in this section shall be eligible for coinsurance under this subpart.

(a) *Value limit.* The coinsured mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the coinsuring lender's estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The coinsuring lender's estimate of value shall result from consideration of:

(1) Estimated market value of the Project by capitalization,

(2) Estimated market value of the Project by direct sales comparison, and

(3) Total estimated replacement cost of the Project.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The coinsured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for payment of debt service shall be determined by reducing the coinsuring lender's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes, and by the return attributable to business operations.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the coinsured mortgage (i.e., without a change of ownership or with the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the coinsured mortgage), then the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the coinsuring lender:

(1) The amount required to pay off the existing indebtedness;

(2) The amount of the initial deposit for the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 252.206;

(4) The estimated repair costs, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the

purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisition as determined by the lender. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price as indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgages fees under § 255.206;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

§ 252.904 Term of the mortgage.

Notwithstanding the provisions of § 252.205, a mortgage coinsured under this subpart must have a maturity satisfactory to the coinsuring lender, which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for coinsurance.

§ 252.905 Labor standards and prevailing wage requirements.

The provisions of §§ 252.209 and 252.301(e) of this part shall not apply to mortgages coinsured under commitments issued in accordance with this subpart.

§ 252.906 Processing and commitment.

Except where otherwise specified in this section, the provisions of § 252.302 shall not apply to mortgages coinsured under this subpart.

(a) After acceptance of an application for a commitment to coinsure, the coinsuring lender will determine the maximum coinsurable Mortgage, review any list of repairs for com ance with HUD standards, determ the acceptability of the proposed m agement agent, and make other de minations necessary to assure acce ability of the proposed Project. T lender must make these determi tions in the manner prescribed by Commissioner.

(b) Paragrah (b) of § 252.302 appl to mortgages coinsured under this s part.

(c) Paragraph (c) of § 252.302 appl to mortgages coinsured under this s part.

(d) An application may be made a commitment that provides for t coinsurance of the mortgage aft completion of repairs and improv ments or for a commitment that pr vides, in accordance with standards e tablished by the Commissioner, f the completion of specified repairs a improvements after endorsement.

§ 252.907 Payment of MIP by Mortga and lender.

(a) *Amount of MIP to be collecte from the Mortgagor.* (1) Before en dorsement of the Mortgage for coi surance, the lender must collect fro the Mortgagor an initial MIP whic shall not exceed the sum of one pe cent per year of the average outstan ing principal balance of the Coinsure Mortgage, calculated from the date o endorsement for Coinsurance to on year after the due date of the firs payment to principal.

(2) For each year thereafter, th lender must collect from the Mortga gor and place in escrow monthly MIP sufficient to accumulate 0.5 percent o the average principal balance out standing during the upcoming yea No adjustments may be made for de linquent payments or prepayments o the Mortgage, except as provided in § 252.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.65 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.65 percent per year of the average outstanding balance of the Mortga

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from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments, or Mortgage prepayments, except as provided in § 252.804.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

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AUTHORITY: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 50 FR 25924, June 24, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 255.1 Purpose and scope.

(a)(1) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approved lender (i) assume a portion of any loss and (ii) carry out (subject to monitoring) underwriting, commitment, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(2) Section 311 of the Housing and Community Development Act of 1974 also added a new section 223(f) to the Act. Section 223(f) authorizes the Secretary to insure a mortgage executed in connection with the purchase or refinancing of an existing multifamily housing project.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under coinsurance will reduce processing time and staff burden, and increase lender involvement in all phases of the HUD mortgage insurance process. In carrying out such a program in connection with the insured financing or refinancing of existing multifamily housing, HUD expects to assist significantly in the conservation of neighborhoods and existing housing resources.

(c) This part provides for the coinsurance of Mortgages under Section 207 of the National Housing Act (pursuant to sections 223(f) and 244 of the Act) which cover existing multifamily projects meeting the requirements of this part.

(d) No full insurance authorized under any provision of the National Housing Act will be withdrawn, denied, or delayed because of the availability of coinsurance under this part.

(e)(1) If the Commissioner determines that coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods or to purchasers of older and lower cost housing, the Commissioner will discontinue the program after due notice. In such a case, no further coinsurance applications will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the housing or Mortgage market in a market area or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue coinsurance activities in such area after due notice.

(f)(1) Section 244(b) of the Act also provides that, in delegating mortgage insurance processing duties to lenders, physical inspection of dwelling units be conducted in accordance with at least the minimum standards and criteria used by HUD personnel under the full FHA insurance programs. Both the review of projects for eligibility under the program and the inspection of repairs and improvements on projects approved for coinsurance will be conducted in accordance with such standards and criteria.

(2) Insurance authorized by this part will not be available for mortgages on properties that are eligible to be insured solely under the authority of section 223(e) of the National Housing Act.

(g) Neither the coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13161, Apr. 17, 1986; 53 FR 8887, Mar. 18, 1988]

§ 255.2 Coinsurance contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commissioner's authorized departmental representative, and includes the terms, conditions, and provisions of this part.

[51 FR 13161, Apr. 17, 1986]

§ 255.3 Definitions.

(a) "Coinsured Mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by endorsement of the Mortgage note by the Commissioner or by the Commissioner's authorized departmental representative.

(b) "Cooperative Mortgagor" means a nonprofit cooperative ownership housing corporation regulated under State law and by the lender under a regulatory agreement, and which requires membership eligibility and transfer of membership in a manner approved by the Commissioner.

(c) "Distribution" means the withdrawal of any cash or assets of the project excluding outlays for:

(1) Mortgage payments;

(2) Reasonable expenses necessary for the proper operation and maintenance of the project; and

(3) Repayment of advances from the owner, when such repayments are authorized by the Commissioner.

(d) "General Mortgagor" means any Mortgagor approved by the lender that does not meet any of the definitions in paragraph (b), (e), or (i) of this section and that is regulated by the lender by means of a regulatory agreement.

(e) "Limited Distribution Mortgagor" means an entity restricted by Federal or State law, and by the lender by means of a regulatory agreement, as to its rate of return and other aspects of its operation.

(f) "Mortgage" means a first lien on real estate and other property commonly given to secure either advance on real estate or the unpaid balance of the purchase price of real estate under the laws of the jurisdiction in which the real estate is located. "Mortgage" includes any credit instrument(s) secured by the real estate.

(g) "Mortgagor" means the original borrower under a Mortgage and its successors, and any assigns approved by the Commissioner.

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(h) "Mortgage Insurance Premium" (MIP) means the mortgage insurance premium collected under § 255.801 of this part.

(i) "Nonprofit Mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operations of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(j) "Residual Receipts" means (1) for projects owned by Nonprofit Mortgagors, all Surplus Cash and (2) for projects owned by Limited Distribution Mortgagors, any Surplus Cash remaining after allowable Distributions have been made or funds have been set aside for their payment.

(k) "Sound Capital Resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as its net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus, reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound Capital Resources may include (up to the limit specified in § 255.102(b)(2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than $100,000,000. For purposes of determining "sound capital resources", a loss reserve, established to cover coinsurance liability under this part that is treated as a liability in the lender's balance sheets, may be deemed a capital item rather than a liability.

(l) "Substantial Rehabilitation" consists of repairs, replacements, and improvements:

(1) The cost of which exceeds the greater of:

(i) 15 percent of the property's value after completion of all repairs, replacements, and improvements, or

(ii) $6,500 per dwelling unit, adjusted by any applicable high-cost area factor under § 255.203(a) (or in the case of any purchase or refinancing involving property to be rehabilitated under Part 511 or Part 850 of this title, $20,000 per dwelling unit, except that in these cases the Commissioner may increase this amount by not to exceed 25 percent for specific properties where the Commissioner determines that cost levels so require); or

(2) That involves the replacement of more than one major building component. For purposes of this definition the term "major building component" includes roof structures; ceiling, wall or floor structures; foundations; and plumbing, heating/air conditioning, or electrical systems.

(m) "Surplus Cash" means any unrestricted cash remaining after.

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any Mortgage or note coinsured by the Commissioner.

(ii) All amounts required to be deposited in any replacement or operating reserve, and

(iii) All other obligation of the project other than the coinsured mortgage unless funds for payment are set aside, or deferral of payment has been approved by the lender, and

(2) The escrow of an amount equal to:

(i) The aggregate of any special funds required to be maintained by the project; and

(ii) The project's total liability for tenant security deposits.

In computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13161, Apr. 17, 1986; 54 FR 3446, Jan. 24, 1989]

§ 255.4 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments will not adversely affect the interests of the lender under the Contract of Coinsurance on any mortgage already coinsured. Amendments will not adversely affect the interest of a lender on any mortgage to be coinsured on or which the lender has issued a firm commitment to coinsure, provided that the Mortgage is endorsed for coinsurance within 60 days after issuance of the commitment. The 60 days will run

from the date of the original issuance of the commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment to the regulation.

[51 FR 13161, Apr. 17, 1986]

Subpart B—Lender Requirements

§ 255.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6, or § 203.7(c); and (b) meets the requirements of § 255.102.

[52 FR 3612, Feb. 5, 1987]

§ 255.102 Review and approval as coinsuring lender.

The Commissioner will review an applicant lender's technical staff and procedures before granting approval as a coinsuring lender under this part. This review, including an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, mortgage servicing, and disposition functions.

(a) A fee of $5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than $1,500,000, including liquid funds of at least $500,000. An unconditional and irrevocable firm letter of credit of not more than $500,000 from a supervised financial institution with asset of not less than $100,000,000 may be used to meet up to $500,000 of this Sound Capital Resources requirement and up to $500,000 of the included liquidity requirement. The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement and an additional one dollar of Sound Capital Resources for each 300 dollars of outstanding principal indebtedness on Mortgages it has coinsured under this part.

(3) Evidence acceptable to the Commissioner that the lender has the operating procedures, internal management controls, and technical staff (under contract or in its own employ) necessary to discharge full Mortgage underwriting, oversight, servicing, management, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions. It must agree to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(4) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(5) A statement agreeing to file annual audits similar to those described in paragraph (a)(4) of this section, and annual reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(6) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial and other records of the lender.

(7) A statement agreeing to comply with the provisions of Title VIII of the Civil Rights Act of 1968 as amended, the Equal Credit Opportunity Act, Ex-

ecutive Order 11063 as amended, and other Federal laws and regulations issued under these authorities with respect to the lending, investing, or coinsuring of funds in real estate Mortgages.

(8) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 255.105.

(9) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing its functions under this part.

(10) A statement agreeing to notify HUD immediately whenever the lender's Sound Capital Resources fall below the level required by paragraph (a)(2) of this section. In addition, the lender must agree that it will request and receive approval from HUD before implementing any voluntary transfer or series of transfers of the lender's assets which would cause the lender's Sound Capital Resources to fall below the required level. Finally, the lender must agree that if such transfer does take place without prior HUD approval, the remaining assets of the lender and any assets disbursed without such approval will be deemed to be held in trust for the benefit of HUD, and consequently, HUD would have a cause of action against any of the original principals of the lender or any other party for any transfer not made in accordance with these requirements.

(The information collection requirements contained in paragraphs (b)(2), (b)(3) and (b)(4) were approved by the Office of Management and Budget under control number 2502-0273)

§ 255.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinsure under this part. A temporary lapse in this authority will not terminate lenders' approved coinsurer status or affect outstanding firm commitments or coinsurance in force. However, lenders may not, during any such lapse, issue or amend commitments or reopen expired commitments.

(b) Suspension or withdrawal of approval under § 255.104.

§ 255.104 Probation, suspension or withdrawal of approval.

(a) A coinsuring lender may be placed on probation, be temporarily suspended, or have its approval as a coinsuring lender withdrawn by the Commissioner, or designee, for any of the following causes: (1) Failure to maintain satisfactory Sound Capital Resources.

(2) Failure to operate the program in a prudent manner or to discharge its responsibilities under any regulatory agreement, coinsurance contract, or administrative procedures issued by the Commissioner under this part.

(3) Payment or receipt, by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to or from any person who has received any consideration from another person for services related to the transaction; however, compensation may be paid for the actual performance of services approved by the Commissioner.

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect.

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan.

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender.

(7) Any other cause determined by the Commissioner or designee to be appropriate.

(b) HUD may place a mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the coinsurance program. During the probation period the mortgagee may continue to issue commitments for insurance, subject to conditions required by HUD. Such conditions may include, but are not limited to, submission of the processing to HUD for its approval before issuance of the commitment.

(c) Coinsuring lenders will be notified in writing by the Commissioner, or designee, when a probation, suspen-

sion or withdrawal action is taken. The notice will specifically state the cause, effect, and duration of the action. Lenders must comply with the conditions of the notice immediately, but may request an informal hearing on the action within 10 working days of receipt of the notice. The hearing shall be held by the Commissioner or designee. The lender shall be given the opportunity to be heard within 10 days of receipt of the request and may be represented by counsel. The Commissioner or designee will notify the lender in writing of the results of the hearing within 10 working days of the hearing and receipt of any materials. A decision to withdraw, suspend, or continue probation following a hearing constitutes final agency action.

(d) Probation, withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or commitments in effect at the time of the probation, withdrawal or suspension of approval.

(e) Serious misconduct or noncompliance with the requirements of the coinsurance program may also result in action against coinsuring lenders in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

§ 255.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsurance loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.4, 203.6, or § 203.7(c) of this chapter and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may, after giving the lender a 30-day written notice, require the lender to cancel the servicing arrangement.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0273)

[50 FR 25924, June 24, 1985, as amended at 52 FR 3612, Feb. 5, 1987]

§ 255.106 Assignment of and participation in coinsured mortgages.

(a) *Assignment of coinsured mortgage.* (1) A lender may assign a coinsured mortgage to another lender if the following requirements are satisfied:

(i) The assignee is a HUD-approved coinsuring lender;

(ii) The lender shows good cause for the assignment;

(iii) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to HUD; and

(iv) The Commissioner gives prior written approval for the assignment and any risk allocation between assignor and assignee.

(2) The lender must inform HUD promptly following the assignment of any coinsured mortgage. The lender will not be relieved of its obligation to pay mortgage insurance premiums until HUD has received this notice.

(b) *Transfer of partial interest under participation agreement.* A partial interest in a coinsured mortgage or pool of coinsured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the coinsured mortgage or mortgages shall be held by an approved coinsuring lender, which shall for purposes of this paragraph (b), be referred to as the principal lender;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(i) The principal lender shall remain the lender of record under the Contract of Coinsurance;

(ii) The Commissioner shall have no obligation to recognize or do business with anyone other than the principal lender with respect to the rights, benefits or obligations of the lender under the Contract of Coinsurance; and

(iii) The mortgagor shall have no obligation to recognize or do business

with anyone other than the principal lender or its servicing agent with respect to the rights, benefits and obligations of the mortgagor or the lender under the coinsured mortgage; and

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose:

(i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgagees;

(ii) Whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and

(iii) That no insurance fund administered by HUD will pay benefits to protect against the risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(c) *Government National Mortgage Association Requirements.* (1) If the coinsured mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Project Loan Certificates.

(Approved by the Office of Management and Budget under control number 0502-0331)

[51 FR 28703, Aug. 11, 1986]

§ 255.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular project. Reinsurance may be obtained for:

(1) 50 percent of its risk;

(2) 100 percent of its risk;

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure; or

(4) 10 percent of the amount of Mortgage approved for coinsuran with respect to property to be rehabi tated with assistance under Part 5 or Part 850 of this title.

(b) The effect of reinsurance on th insurance benefits payable by th Commissioner is covered in § 255.820.

(c) Subject to the ceilings provide in § 255.824, any reinsurance polic must name the Commissioner as co tingent beneficiary in the event tha default by the lender compels th Commissioner to reimburse the Go ernment National Mortgage Associa tion for the amount that the Associa tion had to pay securities holders as result of the lender's default.

[50 FR 25924, June 24, 1935, as amended a 51 FR 13161, Apr. 17, 1986; 52 FR 1624 May 4, 1987]

§ 255.108 Pledging and other security a rangements.

A lender may pledge, subject t standards established by the Commis sioner, the beneficial interest in a Co insured Mortgage as security unde the terms of a reinsurance contract trust indenture, third party guarante agreement or similar financing ar rangement directly related to the coin surance transaction, subject to the fol lowing conditions:

(a) The lender must retain legal title to the note and the Mortgage, subject to the security interest created, unless the title is otherwise transferred in accordance with § 255.106. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record or any approved successor to the lender's title to the Mortgage with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage, or with another person or entity servicing the Mortgage loan under

§ 255.105, except that the Mortgagor may be directed to make payments under the Mortgage to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interest of Coinsured Mortgages backing Government National Mortgage Association (GNMA) Project Loan Certificates except as authorized by GNMA.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13161, Apr. 17, 1986]

§ 255.109 Minimum principal loan amount.

A lender may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

[53 FR 8887, Mar. 18, 1988]

Subpart C—Program Requirements

§ 255.201 Eligible project.

(a) Existing housing projects (with such repairs and improvements as are determined by the lender to be necessary) are eligible under this part. The property must not require Substantial Rehabilitation as defined in § 255.3 and three years must have elapsed from the date of completion of construction or Substantial Rehabilitation of the project, or from the beginning of occupancy, whichever is later, to the date of application for mortgage insurance. In addition, a project:

(1) Must have five or more units;

(2) may be detached, semi-detached, row houses, or multifamily structures;

(3) Must comply with all applicable zoning or deed restrictions, and applicable building and other governmental regulations;

(4) Must be primarily for residential use, and may include only such commerical and community facilities as the lender determines will be adequate and appropriate to serve the occupants. The net rentable commercial area must not exceed 20 percent of the total net rentable area, but this limitation may be waived, for good cause, by the Commissioner.

(5) Must have attained sustaining occupancy (occupancy that would produce rental income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the lender, before endorsement of the project for insurance; alternatively, the Mortgagor must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the lender in accordance with standards established by the Commissioner.

(b) No insurance will be made available under this part for any building located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (1) the jurisdiction in which the project is located is participating in the National Flood Insurance Program and is subject to 44 CFR Parts 59–79; or (2) less than a year has passed since FEMA notification regarding such hazards, and flood insurance is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(c) No insurance will be made available under this part with respect a property within the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

(d) Wherever applicable, projects insured under this part must comply with the National Historic Preservation Act (16 U.S.C. 470).

(e) Involuntary displacement of tenants must be minimized under a plan developed by the Mortgagor, in any case where it is anticipated that repairs and improvements will cause such displacement.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13161, Apr 17, 1986]

§ 255.202 Eligible mortgagors; Disclosure.

(a) Mortgagors approved by the lender in accordance with standards established by the Commissioner are eligible under this part.

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of

Social Security and Employer Indentification Numbers, as provided by part 200, subpart U, of this chapter.

Approved by the Office of Management and Budget under control number 2502-0118)

[50 FR 25924, June 24, 1985, as amended at 54 FR 39697, Sept. 27, 1989]

§ 255.203 Maximum mortgage limitations.

The maximum Mortgage coinsurable under this part is the lowest of the amounts determined under the following limits:

(a) *Statutory cost limits.* Congress has established maximum per-unit dollar amounts for costs attributable to dwelling user. These limitations vary by number of bedrooms, structure type (elevator or non-elevator), Mortgagor type, and section of the National Housing Act, and are changed from time to time by statute. In addition, to compensate for geographic differences in construction costs, the Commissioner may establish, where appropriate, high-cost area factors. These are percentage increases over otherwise applicable basic dollar limits. The factor for any geographic area may not exceed 210 percent of the basic limit. The factor applicable to a particular project may be obtained from the appropriate HUD field office. On an individual project basis in high-cost areas, the Commissioner may approve the use of a factor of up to 240 percent of the basic limit where costs justify it. However, in cases involving project mortgages purchased or to be purchased by the Government National Mortgage Association (GNMA) under its Special Assistance Functions authorized by former section 305 of the National Housing Act (Tandem programs), the Commissioner may not approve a factor of more than 190 percent. In the unusually high-cost areas of Alaska, Guam, and Hawaii, the Commissioner may approve the use of a factor of up to 360 percent. The Commissioner is also permitted to increase the otherwise applicable dollar limits by up to 20 percent to account for the installation in the project of a solar energy system (as defined in section 2(a) of the National Housing Act) or certain residential energy conservation measures (as defined in sections 210(11)(A) through (G) and (I) of Pub. L. 95-619). The maximum coinsurable amount may not exceed the sum of the project's total calculated statutory cost limits plus the applicable percentage below of estimated cost not attributable to dwelling use:

(1) Cooperative project loans—90 percent;

(2) Project loans insured under § 207.32a(*l*)—90 percent;

(3) All other project loans—85 percent.

(b) *Value limit.* An amount not exceeding 85 percent (90 percent if the property is a cooperative project or meets the eligibility requirements contained in § 207.32a(l) of this chapter) of the lender's estimate of value of the project.

(1) The final estimate of value for the purpose of this section results from consideration of three indicators of value:

(i) The estimated market value of the project by capitalization. Capitalization will use net income which results from market rents estimated by comparison with unsubsidized projects, capitalized at rates extracted from market transactions involving comparable properties. Because of the presence of units with below-market rents in projects rehabilitated with assistance under Part 850, the Commissioner will issue guidelines for the calculation of capitalization and market value under this paragraph where such properties are involved.

(ii) The estimated market value by direct sales comparison. Market value by direct sales comparison will be estimated by comparison of the subject property with competing properties recently sold, using at least two other properties for the comparison.

(iii) The total estimated replacement cost of the project (without deducting depreciation). The total estimated replacement cost of the project (before depreciation) provides only an upper limit. The final estimate of value must be between that indicated by capitalization and that indicated by direct sales comparison, but may not exceed the total estimated replacement cost of the project.

(2) In the event the Mortgage is secured by a leasehold estate rather

than a fee simple estate, the value of the property described in the Mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(c) *Debt service limits.* The net projected project income available for payment of debt service is determined by reducing the estimated gross income of the project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements, taxes and distributions. In determining net projected project income for cooperative projects, a 3 percent operating reserve and a 2 percent vacancy reserve will be used in lieu of the vacancy and collection loss factor applicable to rental projects. The maximum Coinsurable Mortgage cannot exceed the amount that could be amortized by 85 percent (90 percent for cooperatives or if the project meets the eligibility requirements contained in § 207.32a(1) of this chapter) of net projected project income.

(d) *Property to be refinanced—additional limit.* If the property is to be refinanced by the Coinsured Mortgage (i.e., without a change of ownership) or, if property is sold to a purchaser who has an identity of interest (as defined by the Commissioner) with the seller and the purchase is to be financed with the Coinsured Mortgage, then the maximum Mortgage amount must not exceed:

(1) In the case of a rental project, the greater of

(i) 70 percent of the lender's estimate of value of the project, or

(ii) The cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the lender:

(A) The amount required to pay off the existing indebtedness;

(B) The amount of the initial deposit for the reserve fund for replacements;

(C) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 255.206;

(D) The estimated repair costs, if any;

(E) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(2) In the case of a cooperative project, the cost to refinance the existing indebtedness as defined in paragraph (d)(1)(ii) of this section.

(e) *Property to be acquired—additional limit.* If the project is to be acquired by the Mortgagor and the purchase price is to be financed with the coinsured Mortgage, the maximum amount must not exceed 85 percent (90 percent if the project is a cooperative project or meets the eligibility requirements contained in § 207.32a(1) of this chapter) of the cost of acquisition as determined by the lender. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of those items must be determined by the lender in accordance with standards established by the Commissioner:

(1) Purchase price as indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 255.206;

(4) The estimated repair cost if any, as defined by the Commissioner, in the project;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13161, Apr. 17, 1986; 53 FR 8887, Mar. 18, 1988; 53 FR 10071, Mar. 29, 1988]

§ 255.204 Maximum interest rate.

The interest rate in a commitment to coinsure will be at the rate agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment.

§ 255.205 Term of the Mortgage.

The mortgage must have a maturity satisfactory to the lender, which is not less than 10 years, nor more than the lesser of 35 years (40 years if the project meets the eligibility requirements contained in § 207.32a(l) of this chapter) or 75 percent of the estimated remaining economic life of the physical improvements (100 percent if the project meets the eligibility requirements contained in § 207.32a(l) of this chapter). The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for coinsurance.

§ 255.206 Lender's fees and premium.

(a) The lender may collect from the Mortgagor, and include in the Mortgage, an application fee, financing fee, permanent placement fee, and where an application provides for the completion of repair and improvements, an inspection fee. These fees may not exceed maximums approved by the Commissioner. In the case of inspection fees, a fee of up to $30 per dwelling unit may be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of repairs. The lender may collect other reasonable fees approved by the Commissioner that are paid from sources other than Mortgage proceeds and are disclosed at endorsement. In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under § 207.32a of this chapter.

(b) The coinsuring lender may collect a lender's premium of up to .25 percent (.10 percent in the case of a Mortgage approved for coinsurance benefits under § 255.823) per year of the average outstanding principal balance of the Mortgage (without regard to delinquent payments or prepayments), beginning not earlier than 12 months after the date of the first payment to principal. This premium will be for the account of the lender or an insurer of the lender.

[51 FR 13162, Apr. 17, 1986, as amended at 52 FR 31992, Aug. 25, 1987]

§ 255.207 Coinsurance of mortgages in lender's portfolio.

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceding submission of the application to the lender;

(2) Refinancing of portfolio loans makes up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period (except that the Commissioner may permit lenders to exceed this limit if the additional refinancing relates to projects that meet the eligibility requirements of § 207.32a(l) of this section; and

(3) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(2) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole involvement is servicing.

§ 255.208 Nondiscrimination in housing and employment.

The Mortgagor must certify to the lender and to the Commissioner that so long as the mortgage is coinsured under this part it will:

(a) Not use tenant selection procedures that discriminate against families with children, unless the project was specifically designed for housing the elderly or handicapped;

(b) Not discriminate against any family because of the sex of the head of the household;

(c) Comply with title VIII of the Civil Rights Act of 1968 as amended and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion, sex, or national origin; administer the project and related activities in an affirmative manner to further

fair housing, and comply with State and local fair housing laws;

(d) Comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex or national origin in housing and related facilities provided with Federal assistance;

(e) Not discriminate because of race, color, religion, sex, or national origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 11246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements;

(f) Not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by the Mortgage, for transient or hotel purposes. The term "rental for transient or hotel purposes" means (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel sevices, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellhop service; and

(g) Not sell the project as long as the Mortgage is coinsured under this part, unless the purchaser agrees to comply with the requirements of this section and with applicable transfer of physical asset's requirements.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13162, Apr. 17, 1986]

§ 255.209 Labor standards and prevailing wage requirements

The requirements of § 207.19(d) apply to Mortgage coinsured under this part where the property is to be rehabilitated under Part 511 or Part 850 of this title and the cost of repairs, replacements and improvement exceeds $6,500 per dwelling unit (adjusted for any high-cost area factor under § 255.203(a)).

Subpart D—Processing and Commitment

§ 255.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraphs (b), (d) and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgagor, the general contractor, if any, and the management agency, in accordance with the Previous Participation and Clearance Review Procedures of §§ 200.210 through 200.218 of this chapter.

(2) Equal opportunity considerations in the development and operation of the proposed project.

(3) The intergovernmental review procedures of 24 CFR Part 52. These procedures apply to cases involving 200 or more units in urbanized areas, or 50 or more units in non-urbanized areas; and

(4) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(5) Environmental impact under environment-related laws and authorities set forth in 24 CFR Part 50.

(c) The lender must also submit any information required by the Commissioner for tracking or monitoring purposes.

(d) The Commissioner's authorized departmental representative must endorse the Mortgage for coinsurance.

(e) The Commissioner retains responsibility for the enforcement of labor standards and prevailing wage requirements set out in § 255.209, except that he may delegate to the lender information collection (e.g., payroll review and routine interviews)

or other routine administrative and enforcement functions, subject to monitoring by the Commissioner.

(f) The precommitment review procedure set forth in this paragraph applies to any application for mortgage coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after April 26, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of April 26, 1990 are limited as follows:

(i) Conditional commitments may be extended not to exceed 180 days from the date of original issuance;

(ii) Firm commitments may be granted two 60-day extensions. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension;

(iv) It obligates the lender and HUD to proceed to the next stage (i.e., firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(Information collection requirements contained in paragraphs (b) and (c) were approved by the Office of Management and Budget under control number 2502-0272)

[50 FR 25924, June 24, 1985, as amended at 51 FR 13162, Apr. 17, 1986; 55 FR 11340, Mar. 27, 1990]

§ 255.302 Processing and commitment.

(a) After acceptance of an application for a commitments to coinsure, the lender will determine the maximum coinsurable Mortgage, review any list of repairs for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 255.301(b);

(2) A waiver, where needed, of the approved high-cost factor under § 255.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 255.301(f).

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments, assuring that commitments are updated when appropriate and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

(d) An application may be made for a commitment that provides for the coinsurance of the mortgage after completion of repairs and improvements or for a commitment that provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

(e) With respect to mortgages to cover properties rehabilitated with assistance under Part 511 or Part 850 of this title, the lender must obtain the approval of the Commissioner before issuance of any commitment under this part. The Commissioner will grant such approval only where the lender demonstrates to the Commissioner's satisfaction that no other feasible financing alternatives are available for the proposed project.

[50 FR 25924, June 24, 1985, as amended at 55 FR 11348, Mar. 27, 1990]

Subpart E—Cost Certification and Endorsement by the Commissioner

§ 255.401 Agreement to certify cost requirements.

Before the start of repairs and endorsement of the loan, the lender must enter into an Agreement and Certification with the Mortgagor, in a form and content satisfactory to the Commissioner for the purpose of precluding any excess of Mortgage proceeds over statutory and regulatory limitations. Under this Agreement, the Mortgagor must agree:

(a) To execute a certificate of actual costs, upon completion of all physical improvements on the mortgaged property, in accordance with § 255.402.

(b) To accept the mortgage loan, reduced by the amount (if any) required under § 255.404.

(c) In cases where specified repairs are to be made after endorsement as provided in §255.302(d), the lender must (1) establish escrows at endorsement as required by the Commissioner; (2) disburse mortgage proceeds attributable to repairs in accordance with standards and procedures established by the Commissioner and only upon satisfactory completion and inspection of the repairs; and (3) whenever applicable, reduce the mortgage by the amount by which estimated costs of repairs exceed actual costs as certified under § 255.402.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13162, Apr. 17, 1986]

§ 255.402 Certificate of actual costs—contents in general.

(a) Submission of certificate. The Mortgagor's certificate of actual cost, in a form approved by the Commissioner, must be submitted to the lender upon completion of the improvements to the satisfaction of the lender. In the case of a transaction where the commitment provides for the completion of specified repairs after endorsement as provided in § 255.302(d), a supplemental certificate of actual cost must be submitted covering such repairs. Cost certification is not required in those refinancing transactions where 70 percent of value is the controlling Mortgage limitation.

(b) The certificate must show the actual cost to the Mortgagor of acquiring the property or refinancing property that secures an existing indebtedness. Items that may be included if paid by the Mortgagor in acquiring property are listed in § 255.203(e). Items that may be included if paid by the Mortgagor in refinancing property are listed in § 255.203(d).

(The information collection requirements contained in paragraph (a) were approved

by the Office of Management and Budget under control number 2502-0272)

§ 255.403 Effect of certification of actual costs.

Any certification required by § 255.402 must state specifically that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as a true statement of the facts contained therein. Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable, except for fraud or material misrepresentation on the part of the Mortgagor.

§ 255.405 Lender's review of mortgage amount.

When the cost certifications submitted under § 255.403 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13162, Apr. 17, 1986, and at 52 FR 16241, May 4, 1987]

§ 255.407 Endorsement by the Commissioner.

Under the terms of its commitment, the lender will hold a closing and submit required documentation to the Commissioner or to the Commissioner's authorized departmental representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the Act and the regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, *i.e.*, the date of HUD endorsement of the project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 255.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13162, Apr. 17, 1986]

Subpart F—Mortgage and Closing Requirements

§ 255.501 Mortgage requirements—re estate.

(a) To be eligible for insurance, th Mortgage must cover property locate in a State, Puerto Rico, the District o Columbia, Guam, the Trust Territor of the Pacific Islands, America Samoa, or the Virgin Islands. Th Mortgage must be on real estate held

(1) In fee simple;

(2) Under a renewable lease for no less than 99 years;

(3) Under a lease running at least 7 years from the date the Mortgage i executed; or

(4) Under a lease executed by a gov ernmental agency, or other lessor ap proved by the Commissioner, for up to the maximum term the agency or lessor may enter into, but not less than 50 years from the date the Mort gage is executed.

(b) The property must be held by an eligible Mortgagor and must, at the time the mortgage is coinsured, be free and clear of other liens except those approved by the lender in accordance with § 255.504.

(c) The Mortgage must cover the entire property included in the hous ing project.

(d) No Mortgage may be accepted for insurance unless the lender finds that the property or project with re spect to which the mortgage is execut ed is economically sound, except that as to mortgages covering property lo cated in Alaska, or in Guam, or in Hawaii, no mortgage may be accepted for insurance unless the lender, with prior notice to the Commissioner, finds that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam, or in Hawaii.

§ 255.502 Title.

(a) *Eligibility of title.* Title to the mortgaged property must be vested in the Mortgagor on the date the Mort gage is filed for record.

(b) *Title evidence.* Before coinsur ance of the Mortgage, the Mortgagor must furnish the lender with a survey, satisfactory to the lender, of the mort

gaged property and a title insurance policy covering the property. If, for reasons that are satisfactory to the lender, title insurance cannot be furnished, the Mortgagor must furnish evidence of title in accordance with paragraph (b)(2) of this section. The type of title evidence are:

(1) A title insurance policy issued by a company, and in a form, satisfactory to the lender. The policy must name the lender and the Commissioner as the insured, as their interests may appear. The policy must also provide that, upon acquisition of title by the lender, it will become an owner's policy running to the lender.

(2) An abstract of title satisfactory to the lender, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the lender as to the quality of the title, signed by an attorney experienced in the examination of titles.

§ 255.503 Mortgage and note provisions.

(a) The Mortgage and note must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without the prior written approval of the Commissioner.

(b) The Mortgage must be executed by an eligible Mortgagor.

(c) The Mortgage must be a first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The note must provide for equal monthly payments on interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by the Mortgagor and lender and acceptable to the Commissioner.

(e) Commencement of amortization shall be on the first day of the second month following the date of endorsement of the Mortgage for coinsurance.

(f)(1) The Mortgage must provide that all amounts due monthly from the Mortgagor of the lender be added together into a single payment to be made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgagor or for the account of the Mortgagor to the following items in the order listed:

(i) MIP under the Contract of Coinsurance;

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(iii) Interest of the Mortgage; and

(iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i)(1) With respect to a Mortgage secured by rental housing, the note must provide that prepayment of the indebtedness is prohibited (except as required by the Commissioner) for a period of five years from the date of endorsement of the Mortgage (or for a period of twenty years where the mortgage was purchased by GNMA under Chapter II of Subtitle B of Title 24) except where, at the time of prepayment:

(i) The Mortgagor has entered into an agreement with the Commissioner to maintain the property as rental housing for the remainder of the specified five-year (or twenty-year) period;

(ii) The Commissioner has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants' organization representing a

majority of the households in the project;

(iii) The Commissioner has determined that continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low- and moderate-income people in the community; or

(iv) The Commissioner has determined that continuation of the property as rental housing would have an undersirable and deleterious effect on the surrounding neighborhood.

(2) Subject to the requirements of paragraph (i)(1) of this section partial or full prepayment of the Mortgage is permitted except that:

(i) Mortgages which cover projects in which units are subsidized under section 8 of the United States Housing Act of 1937 or other Federal law, or Mortgages which may be purchased, assigned, or otherwise transferred to the Government National Mortgage Association (GNMA) may be subject to prepayment standards and restrictions established by the Commissioner, and

(ii) Mortgages given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipatory notes, or both, may contain a prepayment penalty charge acceptable to the lender as to term, amount and conditions in accordance with standards adopted by the Commissioner.

(j) The note may provide for the collection by the lender of a late charge not to exceed four percent of each payment to interest and principal that is more than 15 days late, or such other charges as may be agreed to by the lender and the Commissioner, to cover the extra expense of handling delinquent payments. Late charges must be separately charged to and collected from the Mortgagor and may not be deducted from any total monthly payment.

(k) The Mortgage must contain a convenant prohibiting the use of property for any purpose other than the residential purpose intended on the day the Mortgage was executed.

(l) The Mortgage must contain a convenant, acceptable to the Commissioner, that binds the Mortgagor to keep the property insured by one or more standard policies for fire and other hazards stipulated by the Commissioner or the lender. The amount must comply with any coinsurance clause in the policy applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be based on the amount of insurable improvements estimated by the lender after completion of the project. A standard Mortgagee clause making losses payable to the lender and the Commissioner as their interests may appear must be included in the Mortgage. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and by the Mortgage. If the Mortgagor does not obtain the required insurance, the lender must do so and assess the Mortgage for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13162, Apr. 17, 1986; 51 FR 17173, May 9, 1986]

§ 255.504 Mortgage lien and other obligations.

A Mortgagor shall certify at endorsement of the loan for insurance, and the lender shall determine that:

(a) The property covered by the Mortgage is free and clear of all liens other than the coinsured Mortgage and such other liens as may be approved by the lender, in accordance with standards established by the Commissioner. The lender may approve subordinated liens securing up to the full amount of mortgage financing provided by State or local governments (or agencies thereof) in connection with the rehabilitation of a property assisted under Part 511 or Part 850 of this title, in accordance with standards established by the Commissioner. Liens other than the insured Mortgage that may be approved (other than liens of taxes and assessments of the State or subdivisions of the State not yet due and payable, or ground rents) may not have, under ap-

plicable law, a priority equal or superior to the insured Mortgage.

(b) There do not exist outstanding unpaid obligations contracted for in connection with the Mortgage transaction, the purchase of the Mortgage property, or the repairs and improvements to the project, except obligations approved by the lender in accordance with standards established by the Commissioner. Obligations of the Mortgagor may be approved by the lender under this section only if such obligations are determined by the lender to be of a lesser priority for payment than the obligation of the insured Mortgage.

(c) Except were otherwise provided in paragraph (e) of this section, when a loan is made to finance the purchase of an existing multifamily housing project, the Mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

(1) Seven and one-half percent of the lender's estimate of value as defined in § 255.203(b), or

(2) Seven and one-half percent of the cost of acquisition as defined in § 255.203(e).

(d) Except where otherwise provided in paragraph (e) of this section, when a loan is made to refinance an existing multifamily housing project, the Mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

(1) Seven and one-half percent of the lender's estimate of value as defined in § 255.203(b), or

(2) Fifty percent of the difference between the cost to refinance as defined in § 255.203(d) and the maximum mortgage amount as determined by the lender.

(e)(1) For projects that meet the eligibility requirements of § 207.32a(1) of this chapter, the provisions of § 207.32a(j)(4) shall apply.

(2) For projects to be rehabilitated with assistance under Part 511 or Part 850 of this title, the provisions of § 207.32a(j)(5) shall apply.

(f) The additional obligations provided for in paragraph (c), (d) or (e)(2) of this section shall be represented by promissory notes on forms approved by the Commissioner. These notes shall not be due and payable until the maturity date of the Mortgage to be coinsured under this part, but may be prepaid from Surplus Cash and in accordance with the conditions prescribed in the regulatory agreement between the lender and the Mortgagor.

(g) The limitations on secondary financing described in this section do not apply to loans taken by individual cooperative members to finance or refinance "share" or "membership" purchases or unit transfers.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13162, Apr. 17, 1986; 55 FR 6797, Feb. 27, 1990]

§ 255.505 Regulatory agreement.

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner and the lender are coinsurers of the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines that the additional lender controls or requirements do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

§ 255.506 Other closing documents.

The lender will require execution of such other closing documents as the Commissioner may require.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

§ 255.601 Requirements applicable to all projects.

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only in the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administra-

tive procedures for previous participation clearance and Transfer of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits;

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.

(d) The Mortgagor may not abandon the project until the lender has approved a substitute Mortgagor.

Subpart H—Program Requirements relating to Project Operation

§ 255.701 General.

In order to be eligible for the benefit of insured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

§ 255.702 Reserve for replacements and general operating reserve.

(a) The Mortgagor must establish and maintain a reserve for replacements which will be held and administered by the lender. The Mortgagor must accumulate, maintain and use this reserve, and the lender must administer this reserve, only as provided in the regulatory agreement and the Commissioner's administrative instructions.

(b) In addition to the reserve for replacements required by paragraph (a) of this section, a Cooperative Mortgagor must establish with the lender a general operating reserve in an amount required by the Commissioner's administrative procedures. The Cooperative Mortgagor must accumulate, maintain and use this reserve only as provided in the regulatory agreement and the Commissioner's administrative instructions.

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements (and, in the case of Cooperatives, in a general operating reserve) must be invested in U.S. Treasury securities, securities issued by a Federal agency, or deposits that are insured by an agency of the Federal Government.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13162, Apr. 17, 1986]

§ 255.703 Rents and charges.

(a) For units occupied by tenants assisted under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), Part 882, Subpart E (Section 8 Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title, the Commissioner will determine rents and charges for facilities and services in accordance with the HAP Contract, HUD's regulations, and administrative instructions governing the program under which the unit is receiving assistance. The Mortgagor may not charge rents for units occupied by Section 8-assisted tenants that exceed rents charged for comparable, unassisted units in the project without the prior approval of the Commissioner, and the Mortgagor may not impose lesser charges for facilities and services on unassisted tenants than those imposed on assisted tenants.

(b) For units (other than those governed by paragraph (a) of this section) in projects with mortgages coinsured before November 30, 1983, the Mortgagor may collect unit rents and other charges only in amounts less than or equal to those that the lender approves. In determining maximum allowable rents and charges and in acting upon applications for changes, the lender must adhere to standards established by the Commissioner. These standards are designed to set rents at a level needed to maintain the

economic soundness of the project and to provide a reasonable return to the Mortgagor and reasonable rents to tenants.

(c) For any mortgage coinsured on or after November 30, 1983, the Mortgagor will determine rents and charges for facilities and services for all units (except those occupied by tenants receiving Section 8 assistance) except as follows:

(1) For any mortgage co-insured on or after November 30, 1983, the lender may, subject to the Commissioner's administrative instructions, regulate rents and charges for any units not occupied by Section 8-assisted tenants, if the lender determines (under standards established by the Commissioner) that such regulation is necessary to comply with the requirements of the Internal Revenue Code or State law.

(2) The Commissioner (through the lender) will approve rental adjustments, in the amount provided in § 207.19(e)(2)(ii) (A) or (B) of this chapter, at the election of the mortgagor, if the Commissioner determines that the following conditions are applicable:

(i) The firm commitment to insure the mortgage under this part was issued before July 21, 1986;

(ii) At the time that the mortgagor (or its predecessor in title) (A) obtained a firm commitment to insure the mortgage under this part, or (B) acquired title to the project subject to a mortgage insured under this part, the project would be (or would become upon completion) subject to regulation under a State or local rent control law, but for an exclusion contained in the State or local law based upon regulation of the project rents by the Commissioner; and

(iii) The exclusion continues in effect, so that authorizing the mortgagor to determine rents would have the effect of subjecting the project to regulation under the State or local rent control law.

This paragraph (c)(2) shall not apply to any mortgage coinsured pursuant to this Part, the proceeds of which were used to refinance a mortgage insured under 24 CFR Part 220 or 221 for which the firm commitment to insure under such Part 220 or 221 was issued on or after June 1, 1983.

(d) Any requests for rent increases must be submitted and processed on a form that the Commissioner prescribes.

(e) Any State or local law, ordinance or regulation regulating the rents of projects subject to this part may be preempted only as provided in Part 246, Subpart B of this chapter. HUD will determine the maximum rents that may be charged following any such preemption action using the method outlined in § 207.19(e)(2)(ii)(A) of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0314)

[51 FR 20274, June 4, 1986; 51 FR 22933, June 24, 1986]

§ 255.704 Use of project funds.

(a) The Mortgagor must deposit, in the name of the project, all rents and other receipts of the project in accounts that are fully insured as to principal by an agency of the Federal government. Project funds in excess of those needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may expend project funds only for:

(1) Payment of Mortgage obligations;

(2) Payment of reasonable expenses necessary to the proper operation and maintenance of the project;

(3) Deposits to the reserve for replacements and other required reserves;

(4) Distributions of Surplus Cash permitted under § 255.705;

(5) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(c) The Mortgagor may not use project funds to liquidate liabilities related to the project, other than the Coinsured Mortgage, unless the lender authorizes this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain residents' security deposits

in a trust account separate and apart from all other funds of the project. This trust account must be held in the name of the project and the balance in the account must at all times equal or exceed the project's liability for residents' security deposits. The owner must comply with any State of local laws regarding investment of security deposits and the distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the project or the project residents.

§ 255.705 Distributions and residual receipts.

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative requirements.

(1) Distributions may be paid only from Surplus Cash that exists as of the end of a semi-annual or annual fiscal period.

(2) Initial Distributions may be paid only after repairs and improvements have been completed and the Mortgagor has submitted the cost certifications required by § 255.402.

(3) No Distribution may be paid from borrowed funds, or when payments due under the note, Mortgage, or regulatory agreement have not been made.

(b) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so:

(1) The Mortgagor has not satisfactorily responded to any lender or HUD on-site review report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made:

(2) The lender determines and gives the owner written notification that the project has significant uncorrected physical deficiences; or

(3) there is a covenant, default (as defined in § 255.806(b)) under the provisions of the Mortgage or the regulatory agreement.

(c) The Mortgagor must limit Distributions in any one fiscal period to the amount specified in this paragraph (c), and must calculate Distributions in accordance with the administrative requirements of the Commissioner.

(1) Cooperative projects not receiving assistance under Part 886 of this title, Section 8 Housing Assistance Payments Program—Special Allocations, may distribute all Surplus Cash to members. Cooperatives receiving assistance under Part 886 may distribute only the portion of Surplus Cash attributable to unsubsidized units. Surplus cash must be prorated to subsidized and unsubsidized units in accordance with the Commissioner's administrative procedures.

(2) No Distributions are permitted on nonprofit rental projects.

(3) On projects owned by Limited Distribution Mortgagors, Distributions may not exceed the lesser of Surplus Cash or the amount allowable by the lender as of the end of the period covered by the Surplus Cash computation. Distributions are cumulative. If the project receives subsidy payments from HUD, Distributions will be earned at a rate prescribed in the regulations and administrative procedures applicable to the subsidy program. If the project does not receive subsidy payments from HUD, Distributions will be earned annually or semiannually at a rate prescribed by the lender consistent with State or local law.

(4) On projects owned by General Mortgagors, all Surplus Cash generated during the fiscal period covered by the Surplus Cash computation may be distributed to the Mortgagor.

(d) Nonprofit and Cooperative Mortgagors must deposit Residual Receipts with the lender within 60 days after the end of each fiscal year in which Surplus Cash is generated. Limited Distribution Mortgagors must deposit Residual Receipts with the lender within 60 days after the end of each annual or semiannual fiscal period in which Surplus Cash is generated.

(e) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(1) If the project contains units that are occupied by assisted tenants and are subject to a Section 8 Housing Assistance Payments Contract under Part 880, Part 881, Part 883 or Part 886, the lender may release Residual Receipts only after obtaining the Commissioner's written approval and only in accordance with the Commissioner's administrative requirements.

(2) The Mortgagor may use Residual Receipts only for such purposes as the Commissioner or the lender authorize.

(f) The lender must invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner, or by the lender in accordance with the Commissioner's administrative requirements.

(g) When the contract of coinsurance is terminated any funds remaining in the Residual Receipts account must be distributed in accordance with the Commissioner's administrative requirements.

[50 FR 25924, June 24, 1985, as amended at 51 FR 13162, Apr. 17, 1986]

§ 255.706 Project management.

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commissioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner and lender may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligations to pay) fees for management services.

(e) Establish and maintain the project's books, accounts and records in accordance with the Commissioner's and lender's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 30, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports, properly certified copies of minutes of meetings of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity, and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's or HUD's on-site review reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In renting units, adhere to the civil rights and equal opportunity requirements set forth in § 255.208.

(j) Permit occupancy of:

(1) Unsubsidized units only under a lease or occupancy agreement that meets the requirements of this part and any requirements established by the lender; and

(2) Subsidized units only under a lease or occupancy agreement approved by the Commissioner.

(k) Adhere to the Commissioner's occupancy requirements for any units assisted under a project-based Section 8 Housing Assistance Payments Contract.

(l) Not permit any part of the project to be rented for transient or hotel purposes. The term "rental for transient or hotel purposes" means (1) rental for any period less than 30 days or (2) any rental, if the occupants of the housing accommodation are provided customary hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellhop service.

(The information collection requirements contained in paragraphs (g) and (h) were approved by the Office of Management and Budget under control numbers 2502-0314 and 2502-0108, respectively)

[50 FR 25924, June 24, 1985, as amended at 51 FR 13163, Apr. 17, 1986; 52 FR 16241, May 4, 1987]

Subpart I—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 255.801 Payment of MIP by Mortgagor and lender.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor an initial MIP which shall not exceed the sum of one percent per year of the average outstanding principal balance of the Coinsured Mortgage, calculated from the date of endorsement for Coinsurance to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments, on the Mortgage, except as provided in § 255.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.65 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.65 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments, except as provided in § 255.804.

[50 FR 25924, June 24, 1985, as amended at 52 FR 16241, May 4, 1987]

§ 255.803 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;

(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.804 Pro rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.805 Late charges—MIP.

(a) If the Commissioner receives an MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives an MIP payment more than 30 days after the later of the billing date or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set in comformity with the Treasury Fiscal Requirements Manual.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

Protection of Mortgage Security

§ 255.806 Annual physical inspection.

As long as the mortgage is coinsured by the Commissioner, the lender must ascertain the general physical condition of the property at least once in each calendar year. The lender must furnish the Commissioner and the mortgagor a copy of its inspection report, which must contain the lender's recommendations for any corrective actions.

[53 FR 33755, Aug. 31, 1988]

Delinquency and Default Under the Mortgage

§ 255.807 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must give the Commissioner written notice of the delinquency. This notice must include the information required by the Commissioner's administrative procedures. The Lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

(The information collection requirements were approved by the Office of Management and Budget under control number 2502-0041)

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.808 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a convenant default into a monetary default.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.809 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a Mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments,

when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.810 Notice of default.

If a default (as described in § 255.808) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the Commissioner, the lender must submit this notice monthly on a form prescribed by the Commissioner until the default has been cured, the lender has acquired titled to the property, or the coinsurance contract has been terminated.

(The information collection requirements were approved by the Office of Management and Budget under control number 2502-0041)

[51 FR 13163, Apr. 17, 1986]

§ 255.811 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this section. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 255.821(b) in any subsequent claim for insurance benefits, if the lender complies with conditions set forth in this section and the notice requirements set forth in §§ 255.810 and 255.815. The lender must service delinquent loans in accordance with the Commissioner's administrative requirements.

(1) *Temporary adjustment of Mortgage payments.* Without obtaining the Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative requirements) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) *Withdrawal from the reserve for replacements.* If the Mortgage is more than 25 days delinquent, the lender may withdraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) *Suspension of deposits to the reserve for replacements.* The lender may suspend up to six months reserve deposits during any 36-month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) *Recasting the Mortgage.* The lender may recast delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

(The information collection requirements contained in paragraph (a)(1)(iv) of this section were approved by the Office of Management and Budget under control number 2502-0108)

[50 FR 25924, June 24, 1985. Redesignated and amended at 51 FR 13163, Apr. 17, 1986]

§ 255.812 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The Mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

Termination

§ 255.813 Termination of coinsurance contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefits;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage;

(b) The Contract of Coinsurance may, at the option of the Commissioner, be terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage that does not meet the requirements of § 255.106.

(c) When the Coinsurance Contract is terminated, all of the rights and obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.814 Notice and date of termination by Commissioner.

The Commissioner will notify the lender that the Contract of Coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 255.811 occurs.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

Claim Procedure and Payment of Insurance Benefits

§ 255.815 Notice of election to acquire property and file a claim.

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that (a) the lender and the Mortgagor are diligently pursuing reinstatement of the Mortgage, and (b) reinstatement of the Mortgage and resolution of the problems that led to the default are feasible.

(The information collection requirements were approved by the Office of Management and Budget under control number 2502-0041)

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.816 Acquistion of property.

Unless the Commissioner has given the lender a written extension within 30 days after submitting the notice required by § 225.815, the lender must start action either to foreclose the Mortgage or acquire title to the Mort-

gaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management as set forth in the regulatory agreement and the Commissioner's administrative procedures.

[51 FR 13163, Apr. 17, 1986]

§ 255.817 Deed-in-lieu of foreclosure.

In lieu of starting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a covenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13163, Apr. 17, 1986]

§ 255.818 Disposition of property and application for insurance benefits.

(a) After acquisition of marketable title to the property, the lender must obtain two appraisals of the property performed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use. The higher of the two appraised values shall be deemed the appraised value for purposes of this subpart.

(b) After the lender sells the property, or at the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 255.82 The lender must file the claim no late than 15 days after the sale, or expira tion of the 12-month period (whiche er is applicable), or Mortgage interes will be curtailed in accordance wit § 255.821(b).

(c) The lender must file the claim o a form approved by the Commissione and must state the sale price and the income and expenses incurred in con nection with the acquisition, repair operation, and sale of the property The lender must also submit evidenc in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a of this section, and ledger records and documentation for all accounts relat ing to the Mortgage transaction.

(d) If the property has not been dis posed of when the lender requests payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner in lieu of the sales prices.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2535-0074)

[50 FR 25924, June 24, 1985. Redesignated and amended at 51 FR 13163, Apr. 17, 1986]

§ 255.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.249(c) will apply, except that the debentures will be dated as of the date of settlement of the claim.

[53 FR 33755, Aug. 31, 1988]

§ 255.820 Amount of payment.

(a) Except as otherwise provided in § 255.823, the basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed-in-lieu of foreclosure;

(2) Plus all items set forth in § 255.823;

(3) Less all items set forth in § 255.822.

(b) The Commissioner will pay insurance benefits equal to 85 percent of the amount computed under paragraph (a) of this section if the lender (1) has obtained no insurance of its coinsurance risk, (2) has insured 50 percent of its coinsurance risk or (3) is a State Housing Agency eligible as a lender under § 203.8(b) of this chapter that obtained insurance from an authorized public Mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public Mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 72.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either 100 percent of its coinsurance risk or for that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance obtained by the lender changes. If reinsurance is increased after endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be increased if reinsurance is reduced or cancelled after final endorsement.

[50 FR 25924, June 24, 1985. Redesignated and amended at 51 FR 13163, Apr. 17, 1986; 52 FR 16241, May 4, 1987]

§ 255.821 Items included in payment.

In computing insurance benefits, the following items will be added to the amount described in § 255.820(a)(1):

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default.

However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of insurance benefits. However, if the lender fails to meet any of the requirements of §§ 255.810, 255.815, 255.816, 255.818(b) or § 255.823(b) within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late.

(c) An amount not in excess of two-thirds of the costs of acquiring the property actually paid by the lender and approved by the Commissioner. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Expenses in connection with the sale of the property.

[50 FR 25924, June 24, 1985. Redesignated and amended at 51 FR 13164, Apr. 17, 1986]

§ 255.822 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 255.820(a)(1):

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure.

(b) All amounts received by the lender on account of the mortgage after the institution of foreclosure proceedings or after acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract.

(c) All cash or funds related to the Mortgaged property that the lender holds (or to which it is entitled), including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral which fund a GNMA Deposit Agreement relating to the lender-issuer's loss exposure during the GNMA Indemnity Period.

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project, or the appraised value of the project as provided in § 255.818 as follows:

(1) If the lender disposes of the project through a negotiated sale, the amount deducted will be the higher of the sales price or the appraised value.

(2) If the lender disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted will be the sale price, even if it is lower than the appraised value.

(3) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value.

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include, but are not limited to, returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13164, Apr. 17, 1986; 53 FR 33[illegible] Aug. 31, 1988]

§ 255.823 Amount of payment for certain mortgages covering property rehabilitated with assistance under 24 CFR Part 511 or Part 850.

(a) The provisions of this section apply to Mortgages covering properties rehabilitated with assistance under Part 511 or Part 850 of this title which the Commissioner has coinsured under this part.

(b) Insurance benefits under this section shall be payable on the date of acquisition of marketable title to the property securing a defaulted Mortgage in accordance with § 255.816. The benefits shall equal the sum of (1) 90 percent of the unpaid principal balance of the Mortgage on the date of the institution of foreclosure proceedings or on the date of acquisition of the property through deed-in-lieu of foreclosure and (2) 90 percent of the interest arrears under the Mortgage on the date insurance benefits under this section are paid. The lender must file with the Commissioner a claim for benefits under this section no later than 15 days after acquisition of the title, or mortgage interest will be curtailed in accordance with § 255.821(b).

(c) Upon acquisition of title, the lender must obtain two appraisals of the property, as provided in § 255.818(a).

(d) Within 30 days after the earlier of the date of sale of the property or the expiration of 12 months from the date of acquisition of title, the lender shall remit to the Commissioner for the credit of the General Insurance Fund:

(1) 90 percent of the net proceeds of the property determined in accordance with this paragraph after the lender sells the property or after the expiration of 12 months from the date of acquisition of title, whichever comes first. For purposes of this paragraph, the net proceeds of the property will be determined by adding the items referred to in § 255.822 except that (A) the item referred to in § 255.822(a) will not be added, and (B) references in § 255.822(f) to amounts to be deducted and appraisals under § 255.818(a) will

mean amounts to be added and appraisals under paragraph (c) of this section, and by subtracting the item referred to in § 255.821 (except that the full amount of the costs of acquiring the property, instead of two-thirds as specified in § 255.821(c) will be subtracted). The lender must furnish information with respect to the net proceeds of the property under this paragraph on a form approved by the Commissioner.

(2) Interest on the amount required to be remitted under paragraph (d)(1) of this section, calculated for the period from the date of payment of insurance benefits under this section to the date of remittance, at a rate that is two percentage points above the rate of the current value of funds to the U.S. Treasury (set in conformity with the Treasury Fiscal Requirements Manual).

(e) Any remittance required under this section that is paid to the Commissioner more than 30 days after the earlier of the date of the sale of the property or the expiration of 12 months from the date of acquisition of title: (1) Must include a late charge of four percent of the amount of the remittance due; and

(2) Will be subject to interest from the appropriate due date at a rate that is two percentage points above the rate of the current value of funds to the U.S. Treasury (set in conformity with the Treasury Fiscal Requirements Manual).

(The information collection requirements contained in paragraph (d)(1) were approved by the Office of Management and Budget under control number 2535-0074)

[50 FR 25924, June 24, 1985. Redesignated and amended at 51 FR 13164, Apr. 17, 1986]

REMEDIES FOR DEFAULT BY A LENDER-ISSUER UNDER THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA) MORTGAGE-BACKED SECURITIES PROGRAM

§ 255.824 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a Coinsured Mortgage, the Commissioner will reimburse GNMA for the amounts GNMA must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 15 percent or 27.75 percent (whichever is appropriate) of the amount computed under § 255.820, plus the amount computed under § 255.822(a), except that, in the case of mortgages for which insurance benefits are payable under § 255.823, the amount will not exceed 10 percent of the unpaid principal balance and 10 percent of the interest arrears under the mortgage determined under § 255.823(b). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13164, Apr. 17, 1986, and amended at 52 FR 16241, May 4, 1987; 53 FR 33756, Aug. 31, 1988]

§ 255.825 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the Commissioner may request that the Mortgagee Review Board withdraw approval of the lender-issuer as a HUD-approved mortgagee, under the provisions of Part 25 of this title.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13164, Apr. 17, 1986]

§ 255.826 HUD recourse against lender-issuer.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the lender-issuer will be liable for reimbursing the Commissioner for the payments.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13164, Apr. 17, 1986]

§ 255.827 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities (MBS) Program, GNMA will have the right, not-

withstanding the requirements of § 255.106, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 207. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR Part 207, except that any payment will be made in cash instead of debentures.

[50 FR 25924, June 24, 1985. Redesignated at 51 FR 13164, Apr. 17, 1986]

§ 255.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

(a) If, as a result of a default by a lender-issuer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay any amount owed to a security holder, GNMA, as substitute lender-issuer, shall be entitled to file a claim for, and to receive, coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if (1) the defaulting lender-issuer has acquired legal title to property previously covered by a Coinsured Mortgage ("coinsured property"), but has not received coinsurance benefits under this subpart, and (2) the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. GNMA may file such a claim, notwithstanding the requirements of § 255.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment made under this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders exceeds the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, the Commissioner shall reimburse GNMA for such additional amount in accordance with § 255.824(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage following the lender-issuer's acquisition of legal title to the underlying coinsured property on behalf of securities holders and GNMA. Such assignment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to the property. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner, in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a), if the Commissioner is required to pay coinsurance proceeds under this subpart to any part other than GNMA with respect to the Coinsured Mortgage.

[50 FR 25924, June 24, 1985. Redesignated and amended at 51 FR 13164, Apr. 17, 1986]

PART 260—INTEREST SUBSIDY GRANTS

Sec.
260.1 Purpose.
260.2 Definitions.
260.3 Applications.
260.4 Selection and approval of applications.
260.5 Program standards.

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); sec. 802(c)(2), Housing and Community Development Act of 1974 (Pub. L. 93-383, 88 Stat. 633 (42 U.S.C. 1440(c)(2))).

SOURCE: 41 FR 34608, Aug. 16, 1976, unless otherwise noted.

§ 260.1 Purpose.

These regulations establish rules and procedures for implementation by the Secretary of section 802(c)(2) of the Housing and Community Development Act of 1974 (42 U.S.C. 1440(c)(2)) to the extent of all currently available contract and budget authority under that subsection. State housing finance and development agencies currently obtain capital for low income housing development through the issuance of tax-exempt financing. Section 802(c)(2) authorizes the Secretary to make, and to contract to make, grants to or on behalf of eligible State agencies to cover not to exceed 33⅓ percent of the interest payable on their bonds, debentures, notes and other obligations which are made subject to Federal taxation and which are issued to finance certain development activities including the provision of housing for lower income families. Thus, section 802(c)(2) and these regulations afford eligible State agencies the option of using taxable obligations to finance certain of their development activities.

§ 260.2 Definitions.

(a) "Eligible obligation"—Any bond, note, debenture or other obligation which:

(1) Is issued by an eligible State Agency;

(2) Is issued for the purpose of financing the construction or development of eligible projects, or issued to refinance short-term obligations of the same issuer issued for such purpose;

(3) Is issued for a term, including refinancings, which shall not exceed forty (40) years;

(4) Would not have been subject to Federal taxation except for the decision of the eligible State agency to obtain assistance under Section 802 (42 U.S.C. 1440(c)(2)); and,

(5) Provides for interest payments on the full outstanding principal balance of the obligation annually, semiannually, or quarterly.

(b) "Eligible project"—A new construction or substantial rehabilitation project (as defined in 24 CFR 883.202) for which a final proposal has been approved by the Secretary pursuant to 24 CFR 880.210(c), 881.210(c) or 883.311(a).

(c) "Eligible State Agency"—A Housing Finance Agency (HFA), designated by the Governor of the State (or Governors in the case of an interstate agency) for purposes of participating in this program under this part and which has been approved as a participating agency pursuant to § 883.103 of this title.

(d) "Secretary"—The Secretary of Housing and Urban Development or an officer authorized to perform the functions of the Secretary.

(e) "State"—Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(f) "Subject to Federal taxation"—An obligation is deemed subject to federal taxation for purposes of this part, if the interest paid thereon and received by the purchaser thereof (of his successor in interest) shall be included in gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1954.

§ 260.3 Applications.

(a) Any eligible State agency may apply for interest subsidy grants under this part; however, the allocation of grant contract authority requested by a single such agency for the period commencing October 1, 1976 and ending September 30, 1977, shall not exceed $2 million, nor shall the allocation requested exceed $2 million of contract authority for use in any subsequent annual period. Applications will be processed in two separate groups as more fully described in § 260.4. To be processed with the first group, an application must be delivered to the Office of Assisted Housing, Room 6106, HUD Building, 451 Seventh Street, SW., Washington, D.C. 20410 no later than 5:00 p.m., August 20, 1976. Applications so delivered after 5:00 p.m. August 20, 1976, and prior to 5:00 p.m., September 20, 1976, will be processed with the second group. Applications so delivered after 5:00 p.m., September 20, 1976, will be rejected. Applications must be placed in a sealed envelope marked "Section 802(c)(2) Interest Subsidy Grant Application" and must state or include the following:

(1) A certificate executed by the Governor(s) of the State(s) in which the applicant conducts development activities authorizing the applicant to receive interest subsidy grants under this part and approving the applications.

(2) The amount of interest subsidy grants requested for the period commencing October 1, 1976 and ending September 30, 1977.

(3) The estimated capital amount of the eligible obligation to which those grants will be applied.

(4) The actual or anticipated issue date of the eligible obligation.

(5) A duly certified resolution of the applicant stating that the bond, debenture, note or other obligation to which the interest subsidy grants requested will be applied, is, or will be, an eligible obligation.

(6) A description of the major anticipated features of the eligible obligations to which the interest subsidy grants requested will be applied, including term, type, amortization schedule, interest rate, total interest payable, acceleration rights, prepayment rights and penalties, and identification of purchasers of the obligation (if known at time of application submission).

(7) The estimated total amount of interest subsidy grants required during the term of the eligible obligation, the percentage of interest payable on the eligible obligation anticipated to be defrayed by those grants (not to exceed 33⅓ percent), where interest payable is calculated as provided in § 260.5(d), and the estimated amount of such grants for each annual period commencing October 1, 1977, until the expiration of the eligible obligation.

(8) The requested manner of grant payment, i.e. annually, semi-annually, quarterly, and the identification of the disbursing agent, if known.

Each application must be executed by an authorized officer of the eligible State agency and must be accompanied by an opinion of the counsel for the eligible State agency as to the authority of that officer to so execute the application on behalf of the eligible State agency.

§ 260.4 Selection and approval of applications.

(a) *First group.* (1) All applications delivered prior to 5:00 p.m., August 20, 1976, and otherwise meeting the requirements of § 260.3 of this part will constitute the first group and will be reviewed by the Secretary to determine acceptability under this part. If the total amount of interest subsidy

grants requested by acceptable applications for the period commencing October 1, 1976, and ending September 30, 1977, or for any subsequent annual period, does not exceed $15 million, then all such applications in the first group shall be approved.

(2) If the total amount of interest subsidy grants requested by these applications for the period commencing October 1, 1976, and ending September 30, 1977, or for any subsequent annual period, exceeds $15 million, then the applications shall be ranked according to the ratio described in § 260.5(d). First ranking shall be awarded to the application with the lowest such ratio; second ranking shall be awarded to the application with the second lowest such ratio, and so forth. In the event of a tie, higher ranking as between the tied applications shall be awarded to that application setting forth the earlier anticipated issue date for the eligible obligation. The Secretary will then approve applications in the order of ranking in the maximum annual amounts requested. In the event it is not possible under this procedure to approve applications for the total maximum annual amount of interest subsidy grants requested by an application, the applicant shall be so advised by the Secretary and given the option of either having approved an amount equal to the then available annual amount of interest subsidy grants or relinquishing its ranking to the next ranked applicant.

(b) *Second group.* If the total amount of interest subsidy grants for the period commencing October 1, 1976, and ending September 30, 1977, or for any subsequent annual period, requested by acceptable applications in the first group equals or exceeds $15 million, then all applications delivered pursuant to § 260.3 of this part after 5:00 p.m. August 20, 1976, will be rejected. If the total amount of interest subsidy grants for the period commencing October 1, 1976, and ending September 30, 1977, or for any subsequent annual period, requested by acceptable applications in the first group is less than $15 million, then all applications delivered after 5:00 p.m. August 20, 1976, and prior to 5:00 p.m. September 20, 1976, and otherwise meeting the requirements of § 260.3, will constitute the second group and will be reviewed by the Secretary. If the total amount of interest subsidy grants for the period commencing October 1, 1976, and ending September 30, 1977, or any subsequent annual period, requested by acceptable applications in the second group does not exceed the difference between $15 million and the total amount of such grants for such periods requested by applications in the first group, then all of the applications in the second group shall be approved. If the total amounts of interest subsidy grants requested by applications in the second group for the period commencing October 1, 1976, and ending September 30, 1977, or any subsequent annual period, exceeds the difference between $15 million and the total amount of such grants for such period requested by applications in the first group, then the ranking and approval systems, as set forth in § 260.5(d), shall be used. In the event that the total amount of interest subsidy grants for the period commencing October 1, 1976, and ending September 30, 1977, or for any subsequent annual period, requested by acceptable applications in both the first group and the second group does not exceed $15 million, then that amount not applied for shall remain available, on a first-come, first-served basis, until such amount is exhausted, and the provisions set forth in this part referring to the ranking of applications shall not apply.

(c) *Approved Applications.* The Secretary will promptly notify in writing all eligible State agencies whose applications have been approved.

[41 FR 34608, Aug. 16, 1976, as amended at 41 FR 42951, Sept. 29, 1976]

§ 260.5 Program standards.

(a) Interest subsidy grants under this part will be made only to eligible State agencies or to disbursing agents duly designated by such eligible State agencies.

(b) Interest subsidy grants under this part may be applied only to eligible obligations.

(c) Interest subsidy grants under this part will not exceed $15 million

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per year commencing October 1, 1976 and $600 million in total amount. No applicant may receive a commitment for more than $2 million during the period commencing October 1, 1976 and ending September 30, 1977, or for any subsequent annual period.

(d) Interest subsidy grants under this part for any eligible obligation shall not exceed 33⅓ percent of interest payable thereon. Interest subsidy grants will be calculated in the following manner:

(1) The total amount of scheduled interest payable during the full term of the obligation will be divided by the number of years in the term of the obligation. The result of this calculation will be the average annual interest payable.

(2) The subsidization percentage will be calculated on the basis of the average annual interest payable, i.e., the ratio of the maximum annual amount of interest subsidy grants requested to the average annual interest payable amount will be defined as the subsidization rate; such rate shall not exceed 33⅓ percent.

(3) The subsidization rate as calculated above will be used to rank applications, as provided in § 260.4.

(e) Interest subsidy grants under this part shall be paid for not more than forty (40) years.

(f) Payments of interest subsidy grants under this part will be made annually, semi-annually or quarterly, at the option of the eligible State agency.

(g) An eligible State agency must bill the Secretary for each scheduled grant payment at least 30 days in advance of the due date of the agency's scheduled interest payment on the eligible obligation to which the grant payment will be applied. The billing will refer to the case number, the amount of grant payment due, and the current status of the agency's payment on the debt.

(h) If the interest payable on each eligible obligation issued by an approved applicant is less than the amount set forth in its approved application, then the approved amounts of interest subsidy grants committed on the basis of said application shall be reduced according to the ratio of interest payable on the eligible obligation set forth in the approved application to interest payable on each eligible obligation actually issued by the applicant.

(i) If the interest payable on each eligible obligation issued by an approved applicant is greater than the amount set forth in its approved application, no adjustment shall be made in the approved amounts of interest subsidy grants committed on the basis of said application.

(j) A commitment of interest subsidy grants under this part shall automatically terminate in the event the applicant fails to issue the eligible obligation for which the grants were requested within 90 days after the issue date specified in its application, except that one extension period of 30 days may be permitted at the discretion of the Federal Housing Commissioner. However, in no event may the obligation be issued any later than September 30, 1980. The commitment of interest subsidy grants under this part shall automatically terminate if the applicant fails to issue the eligible obligation prior to September 30, 1980.

(k) In the event of default or arrearage by an eligible State agency in the payment of principal and/or interest due on an eligible obligation, payments of interest subsidy grants under this part in relation to such eligible obligation may be suspended and/or terminated at the discretion of the Secretary.

[41 FR 34608, Aug. 16, 1976, as amended at 43 FR 45557, Oct. 3, 1978]

PART 265—TRANSFER FROM NONPROFIT TO PROFIT-MOTIVATED OWNERSHIP FOR MULTIFAMILY HOUSING PROJECTS WITH HUD-INSURED OR HUD-HELD MORTGAGES

Sec.

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265.9 Applying for transfer of physical assets.
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AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 45 FR 54205, Aug. 14, 1980, unless otherwise noted.

§ 265.1 Purpose.

This part governs the transfer of physical assets from nonprofit to profit-motivated ownership of certain multifamily housing projects with HUD-insured or HUD-held mortgages. It provides for the orderly processing and approval of these transfers and assures HUD that the physical, financial and management needs of the projects are met through the change in ownership.

§ 265.2 Applicability.

These regulations apply to each nonprofit owned multifamily housing project with a finally endorsed HUD-insured or HUD-held mortgage which is assisted under one of these programs:

(a) Section 236 of the National Housing Act;

(b) Section 221(d)(5) of the National Housing Act;

(c) Section 101 of the Housing and Urban Development Act of 1965; or

(d) Section 8 of the U.S. Housing Act of 1937.

§ 265.3 Definitions.

"Commissioner" means the Assistant Secretary for Housing-Federal Housing Commissioner.

"Director" means the HUD field office Director, who is either an Area Office Manager in a HUD Area Office, a Supervisor in a HUD Service Office with multifamily management responsibility, or the Regional Administrator in the Denver Regional/Area Office.

"Local General Partner" means a general partner which has as its principal place of business an office within the market area served by the multifamily housing project.

"Local Management Agent" means a management agent which has as its principal place of business an office within the market area served by the multifamily housing project.

"Market Area" means the geographical area established for the purpose of setting Section 8 Fair Market Rents under 24 CFR Part 888.

"Multifamily Housing Project" (or "Project") means any property, or combination of properties, consisting of five or more living units with a HUD-insured or HUD-held mortgage.

"Nonprofit" means a corporation or association organized for purposes other than the making of profit or gain for itself or any persons identified with it and which the Commissioner finds is in no manner controlled or directed by persons or firms seeking to derive profit or gain from it.

"Profit-motivated" means a corporation, trust, association, partnership, individual or other entity capable of holding title to real property and organized for the purposes of making profit or gain.

§ 265.4 Waivers.

Upon a determination and finding of good cause, the Commissioner may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver shall be in writing supported by documentation of the facts and reasons which formed the basis for the waiver.

§ 265.5 Limitations against transfer.

No nonprofit owner of a multifamily housing project may convey, transfer, or encumber any of the mortgaged property without the prior written approval of the Commissioner.

§ 265.6 Review of projects proposed for transfer and notice to proposed purchaser.

When a project is proposed for a transfer of physical assets, the Director shall schedule a full review of the project to identify the present physi-

cal, financial, management and tenant needs, including the energy related problems and needs of the project. The Director shall provide the nonprofit owner and the proposed purchaser with the results of this review in writing, including a complete physical inspection report and management review report, indicating HUD's recommended corrective actions. The Director will require the proposed purchaser to respond satisfactorily in writing to all the deficiencies noted in the Director's reports, as well as the criteria of § 265.10. A current energy audit of the project shall be used to determine its energy related problems and needs. HUD and the proposed purchaser shall review the audit and develop a plan to implement energy conservation improvements.

§ 265.7 Director's analysis and findings on the need for a transfer.

(a) Before accepting an application for a transfer of physical assets from nonprofit to profit-motivated ownership, the Director shall make a written finding that a transfer of ownership to a profit-motivated owner is necessary to resolve the problems of the project based on one or both of the following factors:

(1) The nonprofit owner is no longer capable or willing to own and operate the project successfully; or

(2) There is a need for additional cash contributions to satisfy the present physical and financial needs of the project as determined by the review conducted pursuant to § 265.6 because assistance for the project from HUD, considering other use of this assistance, is not available in amounts necessary to satisfy these needs.

(b) If the sole basis for a proposed transfer is the lack of capability or willingness of the existing nonprofit sponsor to own and operate the project successfully, the Director shall determine that there is no capable, nonprofit sponsor in the area which is interested in assuming ownership of the project.

§ 265.9 Applying for transfer of physical assets.

The proposed purchaser shall submit the following to the Director:

(a) An application for transfer of physical assets and all required attachments as stated on the application form and in the Insured Project Servicing Handbook, 4350.1, Chapter 4;

(b) A narrative explanation of why the owner is proposing a transfer of physical assets; and

(c) A check for the transfer fee in the amount of 50 cents per thousand dollars of the original principal amount of the mortgage.

§ 265.10 Criteria for approval.

(a) The proposed purchaser and its principals shall, to the Director's satisfaction, meet the following criteria as supported by written findings of fact:

(1) Include a local general partner if an acceptable local general partner is available. If a local general partner is not available, the proposed ownership entity shall show evidence of its capability to own and successfully operate a project outside the area of its principal place of business.

(2) Show the ability to provide sound project management, especially sound physical and financial management. Employing a local management agent is strongly encouraged. If a proposed management agent is not local, the agent shall show evidence of its capability to manage a project successfully outside the area of its principal place of business.

(3) Show the ability to respond to the needs of the tenants and to work cooperatively with tenant organizations as demonstrated by prior experience in other mutlifamily housing projects or as described in an acceptable plan for establishing sound working relationships with individual tenants and tenant organizations.

(4) Show an overall capacity, including financial capacity as determined by the Commissioner, to operate the project successfully for the remaining term of the mortgage. The involvement of the owner in other multifamily housing projects will be considered in making this determination.

(b) Any proposed purchaser shall satisfy the following additional criteria as determined by the Director and supported by written findings of fact:

(1) Develop a detailed plan acceptable to the Director which responds to the needs of the project and the corrective actions specified by the Director in the review prepared pursuant to § 265.6. Where there is a mortgage delinquency, the plan shall provide that the delinquency will be eliminated by a specified date.

(2) Receive previous participation clearance (2530) for the proposed purchaser and the proposed management agent.

(3) Execute a new regulatory agreement governing the future operation of the project, which shall include the requirement to adhere to the project's Affirmative Fair Housing Marketing Plan on record, as updated and approved by HUD for the transfer. The updated plan shall cover particularly the marketing of vacant units both at the time of transfer and during normal turnover. Proposed purchasers of projects not covered under an Affirmative Fair Housing Marketing Plan shall submit a plan in accordance with 24 CFR 200.600.

§ 265.11 Approval of transfer of physical assets.

(a) The Director shall make a written finding determining whether or not the proposed purchaser meets the criteria set out in § 265.10.

(b) The Director may reject any application upon a written finding of its failure to meet any of the criteria of this part.

(c) If the Director finds that all of the criteria are met, the Commissioner or the Commissioner's designee may approve the transfer.

§ 265.12 Contributions and schedule for payments.

(a) The proposed purchaser shall contribute to the project in cash an amount equal to the greater of 10 percent of the unpaid mortgage principal balance or an amount sufficient, in addition to assistance available from HUD, to meet the present physical and financial needs of the project as determined by the Director pursuant to § 265.6.

(b) The proposed purchaser shall pay the required cash contribution in equal or successively smaller installments over a 24-month period or, if the Director determines it to be necessary in order to meet the cash contribution required by the needs of the project, over a 36-month period. The initial contribution shall be made at the final closing of the transfer and shall be sufficient to meet the project's immediate physical and financial needs as specified by HUD in its review under § 265.6.

(c) Cash contributions shall be placed either in the reserve for replacement account or in a restricted bank account established pursuant to the receipt of flexible subsidy assistance as provided by 24 CFR Part 219 or paid directly to the mortgages as a prepayment on the mortgage or to HUD in the case of HUD-held mortgages. The Director shall determine the appropriate use of the cash contributions and shall approve each withdrawal from the reserve for replacement and escrow accounts.

§ 265.13 Prohibition against payment to the nonprofit owner.

(a) Except as provided in paragraph (b) of this section, the nonprofit owner selling the project shall not receive any remuneration in any form, either in direct payment in respect of the transfer or in respect of any other contribution to the nonprofit, its parent or affiliate organizations, in excess of nominal consideration necessary to effect the sale.

(b) If approved by the Director, the nonprofit owner may be reimbursed in order to repay advances or loans made within the 24 months prior to HUD's approval of the transfer to assure the continued operation of the project.

§ 265.14 Rents and leases.

(a) The rental formula to be used in determining maximum rents after the transfer shall be the same formula as applied previously to the project under the nonprofit owner. No separate allowance shall be made in the rent formula for a return on equity to

the profit-motivated owner. This does not preclude the owner from receiving a distribution if the criteria in § 265.15 are satisfied.

(b) The owner shall honor all existing leases on the property regardless of state or local law.

§ 265.15 Limits on distributions.

(a) Distribution can be made only as permitted by the Regulatory Agreement.

(b) The Director shall limit the owner in any one year to a maximum distribution of six percent of the actual cash contribution.

§ 265.16 Prepayment prohibition.

Prepayment of mortgages in whole or in part of projects transferred from nonprofit to profit-motivated ownership shall be prohibited without the prior written approval of the Commissioner.

SUBCHAPTER C—PLANNING ASSISTANCE TO HOUSING SPONSORS

PART 270—LOAN AND GRANT ASSISTANCE FOR PLANNING AND MAKING FEASIBLE HOUSING PROJECTS IN APPALACHIA

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AUTHORITY: Sec. 207, 81 Stat. 257, 40 U.S.C., App. 1.

SOURCE: 37 FR 15702, Aug. 4, 1972, unless otherwise noted.

Subpart A—General

§ 270.1 Statement of applicable law.

Section 207 of the Appalachian Regional Development Act of 1965 authorizes the Secretary of Housing and Urban Development to make "seed money" loans to nonprofit, limited dividend or cooperative organizations or public bodies and to make "project feasibility" grants to nonprofit organizations and public bodies, both under such terms and conditions as he may prescribe.

§ 270.3 Delegation from Secretary to Assistant Secretary—Federal Housing Commissioner.

The Secretary has delegated to the Assistant Secretary—Federal Housing Commissioner the authority to execute the powers and functions vested in the Secretary by section 207 of the Appalachian Regional Development Act of 1965. The delegation includes the authority for the Commissioner to redelegate such authority to employees of the Department.

§ 270.5 Definitions.

As used in this part:

(a) "Act" means the Appalachian Regional Development Act of 1965, as amended.

(b) "Commission" means the Appalachian Regional Commission, its Executive Committee, or the Federal Cochairman of such commission or his authorized representative.

(c) "Commissioner" means the Assistant Secretary—Federal Housing Commissioner or his authorized representative.

(d) "Cooperative organization" means a type of nonprofit organization created as a nonprofit cooperative ownership housing corporation or trust approved by the Commissioner which restricts permanent occupancy of the project to the members of the corporation or trust and which prescribes requirements, approved by the Commissioner, for obtaining and transferring membership.

(e) "Fund" means the Appalachian Housing Fund allocated to the Secretary for carrying out the purposes of this part.

(f) "FNMA" means the Federal National Mortgage Association.

(g) "GNMA" means the Government National Mortgage Association.

(h) "Limited dividend organization" means an entity eligible as a limited

distribution mortgagor under section 221 of the National Housing Act and § 221.510(c) of this title.

(i) "Nonprofit organization" means a corporation or association (including a cooperative organization) organized for purposes other than the making of profit or gain for itself or any persons identified therewith and which the Commissioner finds is in no manner controlled or directed by persons or firms seeking to derive profit or gain from its operation.

(j) "Public body" means a Federal instrumentality, a State or political subdivision or an instrumentality thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937.

(k) "Secretary" means the Secretary of Housing and Urban Development or an officer of the Department of Housing and Urban Development empowered to exercise any of the functions of the Secretary under section 207 of the Act.

(l) "Section 221" means section 221 of the National Housing Act.

(m) "Section 221 regulations" means the regulations in Part 221 of this title issued to implement section 221 of the National Housing Act.

(n) "Section 235" means section 235 of the National Housing Act.

(o) "Section 235 regulations" means the regulations in Part 235 of this title issued to implement section 235 of the National Housing Act.

(p) "Section 236" means section 236 of the National Housing Act.

(q) "Section 236 regulations" means the regulations in Part 236 of this title issued to implement section 236 of the National Housing Act.

(r) "State Representative" means the member of the Appalachian Regional Commission who represents the State in which a proposed housing project is to be located, or his authorized representative.

(s) "'Seed money' loan" means a loan made under section 207 (a) and (b) of the Act for planning and obtaining federally insured mortgage financing under section 221, 235, or 236.

(t) "'Seed money' grant" means a grant made under section 207(a) and (c) of the Act for planning and obtaining federally insured mortgage financing under section 221, 235, or 236.

(u) "'Project feasibility' grant" means a grant made under section 207(c)(2) of the Act for reasonable site development costs and necessary off-site improvements essential to the economic feasibility of a low- or moderate-income housing project constructed or rehabilitated under section 221, 235, or 236.

(v) "Project" means either multifamily housing developed under section 221 or 236 or a subdivision plan under which the individual houses will be insured under section 235.

Subpart B—"Seed Money" Loans and Grants

§ 270.7 Scope of assistance.

The Commissioner may make "seed money" loans or grants from the fund to provide impetus for and to facilitate the construction or rehabilitation of housing in the Appalachian Region for low and moderate-income persons. Such housing must be developed for mortgage insurance under either section 221, 235 or 236 of the National Housing Act. The conditions of eligibility for applicants and applications for loans or grants and the terms and conditions under which the proceeds of such loans and grants may be used are specified in this subpart.

§ 270.10 Location of proposed project.

The proposed project for which a loan or grant is sought shall be located in the Appalachian Region as that term is defined in section 403 of the Appalachian Regional Development Act, as amended (40 U.S.C. App. 1, section 207).

§ 270.13 Filing, processing and approving loan applications.

(a) Prior to filing an application for a loan under this subpart, an interested party shall obtain approval for such filing from the State representative. The applications shall be filed, on a form prescribed by the Commissioner, with the HUD area or insuring office having jurisdiction over the area in which the applicant proposes to construct or rehabilitate a housing

project to be financed with a mortgage insured under section 221, 235 or 236.

(b) Upon a determination by the Commissioner that the financial assistance applied for will carry out the purpose of this part and that the applicant is eligible for such assistance, the application will be submitted to the Commission for final approval.

(c) After review, and upon approval by the Commission, the loan may be disbursed by the Commissioner.

§ 270.15 Eligible applicants.

(a) To be eligible for a loan, an applicant must be a nonprofit, limited dividend, or cooperative organization or a public body.

(b) To be eligible for a grant, an applicant must be a nonprofit, or cooperative organization or a public body.

(c) An applicant for a loan shall have available funds or assets considered adequate by the Commissioner to defray no less than 20 percent of the expenses of planning a project and of obtaining a mortgage insured under section 221, or 236 or a commitment to insure individual home mortgages under section 235.

§ 270.17 Use of loan proceeds.

An applicant shall agree, in form satisfactory to the Commissioner, to use the loan proceeds for the expenses of planning a housing or rehabilitation project and for obtaining the financing of such project through a mortgage insured under section 221, or 236, or to use the loan proceeds for the expenses of planning a housing subdivision and for obtaining the financing of the single family dwellings through mortgages insured under section 235.

§ 270.20 Maximum amount of loan.

The loan shall not exceed 80 percent of the total cost of both planning the project and of obtaining an insured mortgage(s) under section 221, 235, or 236. These costs may include preliminary surveys and analyses of market needs; legal fees; preliminary site engineering and architectural fees; options for the purchase of land; FHA and FNMA, or GNMA fees; construction loan fees and discounts; and such other items of cost as may be approved by the Commissioner. The loan shall be disbursed on the basis of 80 percent of the Commissioner's estimate of the total cost for such planning and for obtaining the insured mortgage. The loan contract shall provide for an adjustment of the loan to an amount which will not exceed 80 percent of the actual expenditures for such total cost.

§ 270.23 Maturity of loans—contract provisions.

The contract for a loan shall provide for repayment by the borrower within 6 months following the first disbursement of funds pursuant to the contract or at such time as the borrower recovers his expenses from the mortgage proceeds, or at such other time as may be fixed by contract, with the Commissioner. The Commissioner may extend the time for repayment under such terms and conditions as he may prescribe.

§ 270.25 Interest on loans.

(a) Interest shall not be charged to borrowers other than limited dividend organizations.

(b) Interest charged to a limited dividend organization shall be at the prevailing rate, which shall be the maximum rate authorized under § 221.518(a) of this title for mortgages insured under section 221. Such rate shall be determined as of the date the insuring office director recommends approval of the application for financial assistance under the Act.

§ 270.27 Waiver of loan repayment.

The Commissioner may waive the repayment of all or any part of a loan including interest thereon, if he determines that all or a portion of the loan cannot be recovered from the proceeds of a permanent mortgage or mortgages. No waiver of repayment shall be made in connection with a loan to an organization established for profit. Requests for waivers shall be made by the borrower stating the reasons why all or a portion of the loan cannot be recovered from the proceeds of the loan.

§ 270.30 Maximum amount of waiver of loan repayment.

The amount of loan repayment waived shall not exceed those expenditures made by the borrower which the Commissioner determines were in excess of the expenses permissible under § 270.20 and which were not recoverable from the proceeds of a permanent mortgage or mortgages insured under sections 221, 235, or 236. Within the limits of this section, the Commissioner's determination of the amount of a loan repayment to be waived shall be final.

Subpart C—"Project Feasibility" Grants

§ 270.40 Scope of assistance.

The Commissioner may make "project feasibility" grants and commitments for such grants and advance funds therefor, under such terms and conditions as he may require whenever such grants are essential to the economic feasibility of an Appalachian housing construction or rehabilitation project for low and moderate income persons insured under section 221, 235, or 236. The conditions of eligibility for applicants and applications for such grants and the terms and conditions under which the proceeds of such loans and grants may be used are specified in this subpart.

§ 270.43 Location of projects constructed with grant assistance.

Any proposed low and moderate housing project for which a "project feasibility" grant is necessary must be located in the Appalachian Region as that term is defined in section 403 of the Appalachian Regional Development Act, as amended (40 U.S.C., App. 1, section 403).

§ 270.46 Application, processing and funding procedure.

(a) Prior to applying for assistance under section 207(c)(2) an applicant shall obtain approval of his proposal from the appropriate State representative.

(b) After such initial clearance, the applicant shall generally outline his proposal to the director of the HUD area or insuring office having jurisdiction over the area in which the applicant proposes to construct or rehabilitate the project.

(c) The HUD field office director may then invite the applicant to submit those documents necessary to enable HUD to determine project feasibility.

(d) The maximum amount of the grant necessary as well as uses thereof shall be determined in the normal course of HUD's underwriting procedures, as established by the Commissioner.

(e) After a determination by the Commissioner that the financial assistance applied for will carry out the purposes of this part and that the applicant is eligible for such assistance, the applicant and HUD will enter into a grant contract specifying the maximum amount of the grant.

(f) Disbursement of the grant funds shall be made upon such terms and conditions as the Commissioner shall require.

§ 270.49 Eligible applicants.

An applicant must be a nonprofit organization or a public body to be eligible for a grant under this subpart.

§ 270.52 Use of grant proceeds.

Use of grant proceeds is restricted to those reasonable on-site costs necessary to the preparation of a site so that construction of a building or buildings can commence and to those off-site improvements necessary to the project including, but not limited to, sewer and water line extensions.

§ 270.55 Maximum amount of grant.

A grant under this subpart shall be the lesser of:

(a) The total of all reasonable site preparation costs and necessary off-site costs;

(b) Ten percent of the estimated total cost of the project;

(c) The amount of grant assistance necessary to make the project feasible.

§ 270.58 Terms and conditions of grant—Grant Contract.

(a) The terms and conditions of the grant shall be enumerated in the

Grant Contract which shall be executed by the grantee and the Commissioner.

(b) Grant monies shall only be used for those on-site and off-site development and improvement costs specified in the Grant Contract.

(c) Grant monies shall be placed in an escrow account and disbursed as work progresses on the grant objective as approved by the Commissioner. Arrangements other than an escrow may be approved by the Commissioner.

(d) Cost certification shall be required for all grants under this subpart and excess funds shall be returned to the Commissioner. Cost certification shall be required upon the completion of the grant objective and at such other earlier times as the Commissioner may require.

§ 270.61 Grants to public bodies.

Since a public body is not an eligible mortgagor under section 236 a "project feasibility" grant to a public body for necessary off-site improvements and reasonable site development costs for a section 236 project may only be made in cases where the section 236 mortgagor is a nonprofit or cooperative mortgagor as defined in the section 236 regulations.

PART 271—LOAN ASSISTANCE FOR PLANNING LOW AND MODERATE INCOME HOUSING

Subpart A—General

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Subpart B—"Seed Money" Loans and Grants

271.7 Scope of assistance.
271.13 Filing, processing, and approving applications.
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271.25 Cancellation of repayment.
271.27 Maturity of loans—contract provisions.
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Subpart C—"TAP" (Technical Assistance Program) Grants

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271.70 Grant contracts—general requirements.
271.75 Period of performance.

AUTHORITY: Sec. 106, 82 Stat. 490; 12 U.S.C. 1701x.

Subpart A—General

§ 271.1 Statement of applicable law.

(a) Section 106(a) of the Housing and Urban Development Act of 1968, as amended, authorizes the Secretary of Housing and Urban Development to provide or contract with public or private organizations to provide information, advice, and technical assistance to public bodies or to nonprofit or cooperative organizations with respect to the construction and rehabilitation of federally assisted low and moderate income housing.

(b) Section 106(b) of the Housing and Urban Development Act of 1968 authorizes the Secretary of Housing and Urban Development to make loans, under such terms and conditions as he may prescribe, to nonprofit organizations for necessary expenses of planning and obtaining financing for the rehabilitation or construction of housing for low and moderate income families under any federally assisted program.

[37 FR 15704, Aug. 4, 1972]

§ 271.2 Delegation from Secretary to Assistant Secretary—Federal Housing Commissioner.

The Secretary has delegated to the Assistant Secretary—Federal Housing Commissioner the authority to execute the powers and functions, related to the production of housing, vested in the Secretary by section 106(a) and the authority to execute the powers and functions vested in the Secretary by section 106(b) of the Housing and Urban Development Act of 1968. The delegation includes the authority for the Commissioner to redelegate such

authority to employees of the Department.

[37 FR 15704, Aug. 4, 1972]

§ 271.5 Definitions.

As used in this part:

(a) "Act" means the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701t, et seq), and section 106 references are to section 106 of said Act (12 U.S.C. 1701x).

(b) "HUD" means the Department of Housing and Urban Development or, as the context may require, the Secretary of HUD, or any other person authorized to perform any of the functions required of the Department of Housing and Urban Development by the Act.

(c) "Commissioner" means the Assistant Secretary—Federal Housing Commissioner or his authorized representative.

(d) "Fund" means the Low and Moderate Income Sponsor Fund.

(e) "Nonprofit organization" means a corporation or association organized for purposes other than the making of profit or gain for itself or any persons identified therewith and which the Commissioner finds is in no manner controlled or directed by persons or firms seeking to derive profit or gain from its operation.

(f) "Grantee" means any public or nonprofit organization selected for grant assistance under section 106(a) of the Act because of a demonstrated ability to provide information and/or advice and technical assistance concerning the construction and operation of low and moderate income housing.

(g) "TAP" means a technical assistance program under section 106(a) of the Act.

(h) "Public organization" means a Federal instrumentality, a State or territory of the United States or political subdivision or an instrumentality thereof or any unit of general local government within a State or territory of the United States.

(i) "Self-help and mutual self-help programs" means any plan whereby a person or group of persons provides some portion of the initiative (including labor in lieu of cash investment—"sweat equity" and other such concepts if applicable) in producing low and moderate income housing for himself or itself.

(j) "TAP project" means a technical assistance program grant proposal developed under section 106(a) of the Act and approved and funded by HUD.

(k) "Loan Contract and Trust Agreement" means a legally binding agreement in a form approved by the Secretary governing the use of "seed money" which must be executed by the applicant before loan proceeds can be disbursed.

(l) "Seed money" means the estimated total funds, including both the borrower's cash share and the Federal loan proceeds, determined by the Secretary to be necessary to cover the expense of planning and obtaining financing for an eligible project, which expense must be incurred prior to the first disbursement of the construction loan for the project.

(m) "Cancellation" means the discharge of a "seed money" loan obligation by the Secretary provided the borrower meets all the conditions for cancellation as established by HUD.

[37 FR 15704, Aug. 4, 1972, as amended at 41 FR 41870, Sept. 23, 1976]

Subpart B—"Seed Money" Loans and Grants

SOURCE: 41 FR 41870, Sept. 23, 1976, unless otherwise noted.

§ 271.7 Scope of assistance.

The Secretary may make loans from the Fund to encourage and facilitate the construction or rehabilitation of housing for low and moderate income families and individuals under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q). The conditions of eligibility for applicants and applications for such loans and the terms and conditions under which the proceeds of such loans may be used are specified in this subpart.

§ 271.13 Filing, processing and approving applications.

(a) The application shall be filed, on a form prescribed by the Secretary, with the HUD area or insuring office having jurisdiction over the area in

which the applicant proposes to construct or rehabilitate a housing project for low or moderate income families or individuals to be financed under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q).

(b) The application shall be reviewed and may be approved by the appropriate Area or Insuring Office Director, acting by and for the Secretary, provided there is a determination that the financial assistance applied for will carry out the purposes of this part, that the applicant is eligible for such assistance, and that the availability of funding for the loan has been verified by the Central Office.

§ 271.15 Eligible borrowers.

To be eligible for a loan, a borrower must:

(a) Be an incorporated private nonprofit organization whose articles of incorporation are acceptable to the Secretary; however, principals of a private nonprofit corporation to be formed may submit the initial application. The borrower must be the proposed mortgagor of a project to be financed under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q).

(b) Have either available cash or evidence of prior eligible expenditures, or both cash and eligible expenditures, in the amount of 20 percent of the estimated allowable "seed money" expense. Loans or donations to the borrower of any portion of these funds by any individual, corporation, partnership or other party or entity seeking a profit or monetary gain from the project are prohibited. This includes but is not limited to attorneys, architects, consultants, mortgagees, builders, developers, management agents, engineers, surveyors, subcontractors, material suppliers, sellers of land, real estate brokers, and banks whose officers have any identity of interest with the applicant/mortgagor. However, the sale of land for a price approved by HUD by a sponsor to the proposed mortgagor shall be permitted.

§ 271.17 Use of "seed money".

(a) The borrower shall agree under the Loan Contract and Trust Agreement to use "seed money" loan proceeds only for those reasonable and actual expenses which must be incurred prior to the initial disbursement of the construction loan for planning the rehabilitation or construction of the proposed project and in obtaining the financing for the proposed project. Loan proceeds may be expended only for those items specified on the approved "seed money" loan application.

(b) Before "seed money" loan proceeds can be disbursed, the borrower's contribution for "seed money" expense must be fully spent or obligated for allowable items of expense. Evidence of such expenditures or obligations shall be in the form of bills, processing fees due for the next stage of processing or outstanding obligations under contracts or options. Obligations must be due and payable within three months of the date of the application for disbursement of loan proceeds from HUD.

(c) The Area or Insuring Office Director may approve requests for disbursements and amounts which vary from the individual line items shown on the approved section 106(b) loan application, provided the change in amounts disbursed will not result in an increase in the total loan amount. Approval shall be in writing and shall constitute an amendment to the approved loan application and Loan Contract and Trust Agreement.

(d) Revised loan applications must be filed for increases in the total loan amount. In such cases, an additional borrower's share of 20 percent of the estimated increase in "seed money" needs must be spent or obligated as set forth in § 271.17(b) before additional Federal funds can be disbursed.

(e) Expenditures for the purchase of or for contracting to purchase land shall not be considered an eligible "seed money" expense unless the expenditure has the written approval of the Field Office Director. If the borrower owns or acquires any legal or equitable interest in the proposed project site, the "seed money" loans must be secured by a recorded mortgage describing the land comprising the proposed project site. The Area or Insuring Office Director holding the aforesaid mortgage for the Secretary

has authority to release the same and shall release the mortgage lien in order to permit the initial disbursement of the construction loan under the following circumstances:

(1) If the Director determines that the "seed money" loan can be repaid from the proceeds of the construction loan.

(2) If the "seed money" loan is repaid from other sources.

(3) If that portion of the "seed money" loan which was disbursed for the payment of the land, if any, is repaid and the Director recommends cancellation of any remaining "seed money" loan.

(f) Loan proceeds shall not be comingled with any other funds, including the applicant's 20 percent share, and must be placed in a separate account in a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, and any interest earned thereon must be returned to HUD immediately after it is paid to the borrower.

§ 271.20 Maximum amount of loan.

(a) The loan shall not exceed 80 percent of the total and necessary costs which HUD estimated will be incurred in planning the project, for the legal and organizational expense of the borrower and obtaining financing or funding under an eligible federally assisted program.

(b) In no event shall there be more than one "seed money" loan for a proposed housing project and such "seed money" loan shall not exceed $50,000.

§ 271.22 Maximum line item expenditures.

(a) The maximum amount of "seed money" expense that will be approved by the Secretary shall be determined by the Area or Insuring Office Director on the basis of estimated project costs which normally occur prior to the disbursement of the construction loan. The following percentages of estimated costs for specific items are the maximum approvable "seed money" expenses for those items:

Item	Percent
Preliminary site engineering (boundary and topographic surveys and soil tests)	100
Architectural design fee	25
Permanent loan commitment fee (included in FNMA/GNMA fee)	100
Site options	100
Organization expenses (reasonable travel, telephone, postage, and similar expenses of the proposed mortgagor)	[1] 75
Legal fees	15
Supplemental management fees	25
Consultant fees	25
FHA application and commitment fees	100

[1] Not to exceed $750.

(b) The total maximum approved "seed money" expense may be increased by up to 10 percent by the Area or Insuring Office Director as a contingency for actual overruns in specified items of approved "seed money" cost.

(c) Additional items of approvable "seed money" expense, such as other financing fees, may be added to the total on a case-by-case basis; however, requests and approval of additional items must be fully documented.

§ 271.25 Cancellation of repayment.

The Secretary may cancel the repayment of all or any portion of the "seed money" loan provided:

(a) The borrower has not violated any of the provisions of the Loan Contract and Trust Agreement and has used "seed money" funds in compliance therewith.

(b) Either monies sufficient to repay the loan cannot be recovered from the loan for the project or the project proposed by the borrower has proved to be infeasible as determined by the Secretary.

(c) The amount of the debt which will be cancelled or waived will be based upon the amount of approved "seed money" expense that was not recovered and repaid from the proceeds of the construction or permanent loan or from the sale of the borrower's assets as provided in paragraph (d) of this section or from any other source. In the event of partial recovery of approved "seed money" expenditures, the amount recovered must be applied first to the repayment of any outstanding "seed money" loan obligation.

(d) That in cases where the "seed money" loan is secured by a lien on the site or where a site or other assets were purchased in part or totally with "seed money", and such site or assets are not used by the borrower for a project eligible for section 106(b) assistance, such site or assets must be sold at fair market value and the net proceeds (sales price less indebtedness and sales expense) used to repay the "seed money" loan to the extent possible.

(e) Borrowers shall be required to certify that the "seed money" loan proceeds have not been used for costs other than costs for proposed projects approved for section 106(b) assistance.

§ 271.27 Maturity of loans—contract provisions.

The contract for a loan shall provide for repayment by the borrower within 24 months following the first disbursement of funds pursuant to the Loan Contract and Trust Agreement or at such earlier time as the borrower recovers his expense from the proceeds of the construction financing, or at such other time as may be fixed by contract with the Secretary. In the event the borrower fails to comply with the provisions of the Loan Contract and Trust Agreement, the entire outstanding loan obligation shall immediately become due and payable. In the event the borrower is unable to develop a project pursuant to the terms of the Loan Contract and Trust Agreement or any amendments thereto, the time for repayment may be extended under such terms and conditions as may be prescribed by the Secretary.

§ 271.30 Interest on loans.

No interest shall be charged to a borrower for loans made under this subpart provided the borrower complies with the provisions of this subpart and the Loan Contract and Trust Agreement.

Subpart C—"TAP" (Technical Assistance Program) Grants

SOURCE: 37 FR 15704, Aug. 4, 1972, as amended at 41 FR 41871, Sept. 23, 1976, unless otherwise noted.

§ 271.50 Scope of assistance.

The Secretary may provide grant assistance to provide impetus for broader use of the federally subsidized low and moderate income housing programs in areas where the need is largely unmet because of economics and a lack of local capacity necessary to provide such housing. The grant assistance may be for TAP proposals providing for technical assistance to public bodies, nonprofit or cooperative organizations to stimulate the production of low and moderate income housing in areas of greatest need, including, but not limited to, the more rural areas of our country. TAP proposals may include, as a major part of their overall objective, stimulating the creation and continued viability of self-help or mutual self-help groups or programs capable of producing housing TAP proposals may also include as a minor part of their overall objective the assembly, correlation and dissemination of information related to the production of such housing. The conditions of eligibility for applicants, application information and conditions under which the proceeds of such grant may be used are specified in this subpart.

§ 271.55 Filing, processing and approving grant applications.

(a) The application shall be filed, on a form prescribed by the Secretary, together with a detailed plan for the proposed use of grant proceeds, with the HUD area or insuring office having jurisdiction over the area in which the applicant proposes the TAP project.

(b) After review and approval by the Secretary of a grant application, each approved grantee will submit a proposed form of grant agreement which, when executed by the Secretary, will become the complete contract for the use of the grant proceeds. The form of the grant agreement shall generally follow model forms for such agreements which will be furnished the applicant by the Secretary. After final approval of this contract, the proceeds of the grant may be disbursed in a manner prescribed by the Secretary.

(c) Special consideration shall be given to proposals which will stimulate the production of low and moderate income housing in areas where the need for subsidized housing is largely unfulfilled.

§ 271.60 Eligible applicants.

(a) To be eligible for a TAP grant, the applicant must be a nonprofit or public organization.

(b) A TAP grant applicant must demonstrate the capacity, background, experience and accounting and control system deemed necessary by the Secretary to carry out the proposed TAP Project.

§ 271.65 Use of TAP grant proceeds.

A grant recipient shall agree, in a form satisfactory to the Secretary, to use the grant proceeds for expenses reasonable and necessary to effectuate the TAP Project as approved by the Secretary. Any determination made by the Secretary regarding use of grant funds shall be final. Funds will be advanced under the agreement and in conformity with HUD procedures and rules governing grants.

§ 271.70 Grant contracts—general requirements.

Grant contracts shall provide for limitation of the TAP Project planned to a specific geographic area so that more immediate results can be obtained and determined from the grant program. The contracts shall further fully and specifically describe the technical assistance services to be furnished. The contracts shall contain an agreement to provide such reports concerning the operation of the program and the results produced by TAP grants and such other conditions and limitations as may be required by the Secretary.

§ 271.75 Period of performance.

The period of performance of grant contracts will generally be limited to one year although extensions for longer periods may be approved by the Secretary.

SUBCHAPTER D—PUBLICLY FINANCED HOUSING PROGRAMS

PART 277—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

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277.2 General policy.
277.3 Sponsorship.
277.4 Eligible projects.
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277.7 Loan agreement.
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277.9 Other requirements.
277.10 Assistance to nonprofit organizations.
277.11 Refinancing.

AUTHORITY: Sec. 102, 73 Stat. 667; 12 U.S.C. 1701q.

SOURCE: 36 FR 24693, Dec. 22, 1971, unless otherwise noted.

§ 277.1 Definitions.

As used in this part:

(a) All terms shall have the same meaning as given them in the Act.

(b) "Act" means title II of the Housing Act of 1959, as amended, 12 U.S.C. 1701q.

(c) "Applicant" means any nonprofit corporation no part of the net earnings of which inures to the benefit of any private shareholder, contributor, or individual, if such corporation is approved by the Secretary; any limited profit sponsor approved by the Secretary; any consumer cooperative; or any public body or agency eligible under section 202(a)(2) of the Act.

(d) "Construction" means erection of new structures or rehabilitation, alteration, conversion, or improvement of existing structures and includes acquisition of existing structures to be rehabilitated, altered, converted, or improved.

(e) "Development cost" means the costs of construction of housing and related facilities, and of land and necessary site improvements, and includes preliminary development costs, architect and engineering costs, organizational and development costs, legal and administrative costs, and interest during construction and rent-up period.

(f) "Elderly or handicapped families" means families consisting of two or more persons, the head of which (or his spouse) is 62 years of age or over or is handicapped; and any single person who is 62 years of age or over or is handicapped.

(g) "Handicapped person" means any person having a physical impairment which is expected to be of long-continued and indefinite duration, substantially impedes his ability to live independently, and is of such nature that such ability could be improved by more suitable housing conditions.

(h) "Housing and related facilities" means structures suitable for dwelling use by elderly or handicapped families, and structures suitable for use as cafeterias or dining halls, community rooms or buildings, workshops, or infirmaries or other inpatient or outpatient health facilities, or other essential service facilities.

(i) "Secretary" means the Secretary of Housing and Urban Development or any officer authorized to perform the functions of the Secretary.

(j) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

§ 277.2 General policy.

The purpose of the program described in this part is to provide assistance for the development of rental housing projects, to serve elderly or handicapped families whose incomes are below those needed to pay the rentals in adequate private-market housing, through direct loans where private financing is not available on equally favorable terms and conditions. Project design, site selection, and financial arrangements must be consistent with the ultimate purpose of providing pleasant living arrangements at minimum rentals to promote independent living by elderly or handicapped families.

§ 277.3 Sponsorship.

An applicant either must be an established organization the purposes of

which include promotion of the welfare of elderly or handicapped families or must be sponsored by a fraternal, civic, religious, charitable, or similar organization with long-term social and financial responsibility. The sponsor must be willing and able to maintain a continuing interest in and support of the project and its affairs during the life of the loan.

§ 277.4 Eligible projects.

Loan assistance to finance the construction of housing and related facilities for elderly or handicapped families may be provided under the following conditions:

(a) Construction must not be of elaborate or extravagant design or materials and must be undertaken in an economical manner.

(b) Project design, site selection, and costs must provide access to community activities and services, and a pleasant environment.

(c) Nursing homes, hospitals, or similar medical establishments, and chapels or other facilities of a religious nature are not eligible for loan assistance.

(d) Customary leasing arrangements with periodic payments for rentals and collateral services must be provided; life-care contracts, founders' fees, or similar arrangements are not permissible.

(e) An eligible facility must be financially feasible and essential for the welfare of the project residents, and may include such facilities as project-management office space, project workshops and storage space, recreation and social centers, snack bars, craft shops, multipurpose rooms, laundry facilities, and cafeterias or dining halls. Commercial facilities, such as grocery stores, restaurants, beauty and barber shops, may be included if they are essential for the elderly or handicapped families in the project and are not otherwise conveniently available to them.

§ 277.5 Loan applications.

Information and application forms may be obtained from and applications submitted to the HUD Regional Office which serves the area in which the applicant or sponsoring organization is located. A list of HUD Regional Offices with their addresses and areas of jurisdiction appears at § 3.8 of this title. Prior to loan approval, an applicant must establish that:

(a) It has the necessary legal authority to finance, construct, and maintain the proposed facilities, to apply for and receive the proposed loan, and to provide such security as shall be required by the Secretary;

(b) It has the ability to comply with the terms and conditions for repayment of the loan and operation of the project; and

(c) It has or will have such interest in or title to the project site, including access thereto, as will assure undisturbed use, possession, and operation of the facilities during the term of the loan.

§ 277.6 Loan terms.

Loans shall be repayable within such period, not to exceed 50 years, shall bear interest at such rate, not to exceed 3 percent per annum, and shall be so secured and subject to such terms and conditions, as shall be determined by the Secretary. A loan may be in an amount not to exceed the total development cost of the project except that, in the case of limited profit sponsors, a loan may not exceed 90 percent of total development cost.

§ 277.7 Loan agreement.

Upon approval of a loan and reservation of funds, the Secretary will prepare and forward a loan agreement for execution by the applicant. The loan agreement will set forth the terms and conditions of the loan and will also specify conditions which must be fulfilled precedent to the making of the loan. The fully executed loan agreement will constitute the loan contract between the applicant and the Secretary during the life of the loan.

§ 277.8 Regulatory agreement.

Prior to loan disbursement, an applicant is required to enter into a regulatory agreement with the Secretary under which the applicant shall agree: (a) To establish rentals approved by the Secretary, (b) to limit occupancy of the project to elderly or handi-

capped families in accordance with occupancy criteria approved by the Secretary, including prescribed income limits, (c) not to rent any portion of the project for transient or hotel use, and (d) to provide a governing board and management acceptable to the Secretary.

§ 277.9 Other requirements.

(a) All laborers and mechanics employed by contractors and subcontractors in the construction of housing and related facilities assisted under the Act shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a-276a-5, and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act, 40 U.S.C. 327-332.

(b) All contracts for construction work paid for in whole or in part from loan funds provided under the Act shall provide that the contractor shall comply with the Copeland ("Anti-Kickback") Act, 40 U.S.C. 276c, and the regulations of the Secretary of Labor thereunder (29 CFR Part 3).

(c) The requirements of title VI of the Civil Rights Act, 42 U.S.C. 2000d et seq., that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination are applicable to projects receiving assistance under the Act.

(d) All contracts for construction work paid for in whole or in part from loan funds provided under the Act are subject to Executive Order 11246 (30 FR 12319, Sept. 28, 1965), providing for equal opportunity in employment, and the rules and regulations of the Department of Labor with respect thereto.

(e) The provisions of title VIII (Fair Housing) of the Civil Rights Act of 1968, Pub. L. 90-284, 42 U.S.C. 3601-3619, prohibiting refusal to rent to or discrimination against any person in terms or conditions of rental or provision of services on account of race, color, religion, or national origin, are applicable to projects assisted under the Act.

§ 277.10 Assistance to nonprofit organizations.

Nonprofit organizations are eligible for financial assistance under section 106 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701x, to cover costs expected to be incurred in planning and obtaining financing for the rehabilitation or construction of housing projects for elderly or handicapped persons under the Act. Such assistance is in the form of 80 percent interest-free loans to cover such costs directly related to the project as organization expenses, legal fees, consultant fees, preliminary site engineering fees, site options, FHA and GNMA application fees, and construction loan fees. Requests for such assistance should be submitted to the Assistant Commissioner for Subsidized Housing Programs, 451 Seventh Street SW., Washington, D.C. 20410.

§ 277.11 Refinancing.

Projects may be refinanced by mortgages insured under section 236(j) of the National Housing Act, 12 U.S.C. 1715z-1(j), provided that application therefor is made within a reasonable time after project completion. As a condition of obtaining a direct loan, an applicant must agree to seek such refinancing within 30 days after project completion if it finds that refinancing is feasible and advantageous to the occupants of the project. Application for refinancing should be made to the appropriate HUD Regional Office.

PART 278—MANDATORY MEALS PROGRAM IN MULTIFAMILY RENTAL OR COOPERATIVE PROJECTS FOR THE ELDERLY OR HANDICAPPED

Subpart A—General

Sec.

278.1 Purpose.
278.3 Applicability.

Sec.

Subpart B—Mandatory Meals Programs

278.10 Administration of a mandatory meals program.
278.12 Exemptions.
278.14 Tenant incapacity.

Subpart C—Program Management

278.20 Cost management.
278.22 Lease provisions.

Subpart D—Enforcement

278.30 Noncompliance.

AUTHORITY: Sec. 202 of the Housing Act of 1959 (12 U.S.C. 1701q); sec. 101 of the Housing and Urban Development Act of 1965, (12 U.S.C. 1701s); sec. 211 of the National Housing Act (12 U.S.C. 1715b); sec. 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (12 U.S.C. 3535(d)).

SOURCE: 52 FR 6306, Mar. 2, 1987, unless otherwise noted.

Subpart A—General

§ 278.1 Purpose.

(a) This part establishes requirements governing mandatory meals programs in HUD-assisted projects for the elderly or handicapped where these projects are equipped with central dining facilities. Central dining facilities must include a kitchen with sufficient equipment to prepare the meals and a dining area of sufficient size to serve the residents of the project together or in accordance with a schedule set by the project owner or manager.

(b) (1) Project owners are responsible for compliance with any requirements established by State or local nutritional and safety and health standards in applicable statutes and regulations, and with requirements established in contracts with their tenants. Where no State or local statute or regulation covers a mandatory meals program governed by this part, the project owner shall submit annually to HUD a certification from a registered dietician that the project's meals program has been designed to ensure that each mandatory meal provides a minimum of one-third of the daily recommended allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council (as required for certain assistance programs of the U.S. Department of Health and Human Services under section 3030e of the Older Americans Act of 1965, 42 U.S.C. 3001-3058d).

(2) HUD approval of a project's mandatory meals program neither creates an inference that the requirements of State or local law have been met, nor does HUD approval preempt nutritional and health and safety standards in applicable State or local statutes and regulations.

(c) HUD-approved mandatory meals charges under this part are not "rent" under any of the assisted housing programs cited in § 278.3(b) of this part.

§ 278.3 Applicability.

A project is covered under this part if it meets the conditions of paragraphs (a) through (c) of this section.

(a) (1) Statutory authority for HUD financial assistance for the project requires that occupancy be limited to the elderly or handicapped; or

(2) The HUD regulatory agreement designates the project as housing for the elderly or handicapped; or

(3) HUD requires a preference in tenant selection for the elderly or handicapped for all units in the project.

(b) (1) The project receives a subsidy in the form of—

(i) Interest reduction payments under section 236 of the National Housing Act (including State-assisted projects without HUD mortgage insurance);

(ii) Below-market interest rates under sections 221(d)(3) and 221(d)(5) of the National Housing Act; or

(iii) Direct loans under section 202 of the Housing Act of 1959; or

(2) Some or all of the units in the project are covered under this part if those units receive—

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (including State-assisted projects without HUD mortgage insurance);

(ii) Housing assistance payments under 24 CFR Part 886, Subpart A (Section 8 Loan Management Set

Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or

(iii) Housing assistance payments under section 8 of the United States Housing Act of 1937 (other than assistance to families under the Section 8 Existing Housing Certificate Program or the Housing Voucher Program), including Section 8 housing assistance payments by State housing agencies under 24 CFR Part 883, Subpart E (other than assistance to families under the Section 8 Existing Housing Certificate Program or the Housing Voucher Program).

(c) This part is not applicable to HUD-assistance projects for the chronically mentally ill, developmentally disabled, or physically handicapped.

Subpart B—Mandatory Meals Programs

§ 278.10 Administration of mandatory meals program.

(a) Where, before April 1, 1987, a covered project was operating a HUD-approved mandatory meals program, the project owner may require as a condition of occupancy that one meal per day be purchased by tenants residing in the project. Where, before April 1, 1987, the effective date of this rule, HUD has approved mandatory meals programs that require the purchase of two or more meals per day by tenants, project owners may continue to require as a condition of occupancy and purchase of the same number of meals, or fewer meals per day.

(b) Where HUD has approved a project owner's requirement of one meal (or more) per day under the program, all prospective tenants for admission to the project must be given notice, before the lease is executed, that participation in the program is a condition of occupancy in that project. In addition, project owners shall notify in writing current and prospective tenants of the exemptions in § 278.12.

(c) A project owner shall administer the project's mandatory meals program in a nondiscriminatory manner as required under Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(d) After April 1, 1987, HUD will not approve a project owner's request for the establishment of a new mandatory meals program in any project.

§ 278.12 Exemptions.

(a) A project owner with a mandatory meals program shall grant an exemption from purchasing meals under the program to:

(1) Any tenant with a medical condition that requires a special diet that the project cannot provide. To be entitled to this exemption, the project owner may require a tenant to provide documentation signed by a physician, stating that the tenant requires a special diet for medical reasons. The physician's statment must contain a description of the special diet. If the project cannot provide the diet specified in the physician's signed statement, the project owner shall grant the tenant a medical exemption. (However, if the project owner determines that a special diet for certain tenants can be provided, it must be provided at no increased cost to those tenants.)

(2) Any tenant with a paying job that requires absence from the project during the time period that the mandatory meals are served.

(3) Any tenant who is absent from the project for one week or more for hospital care, temporary nursing home care, or vacation. The project owner may require tenants to provide reasonable advance notice of any anticipated absence for a reason described in this paragraph, except absences for hospital care of an emergency nature; or

(4) Any tenant who is permanently immobile or otherwise incapable of visiting the central dining facility (see § 278.14(b)). (In addition, under § 278.14(a), after one month of serving meals in a temporarily incapacitated tenant's dwelling unit, a project owner must either continue serving meals in the tenant's dwelling unit during the period of incapacity or grant a tempo-

rary exemption from the mandatory meals program.)

(b) A project owner may grant any tenant an exemption because of the tenant's dietary practices, for financial reasons, or for other reasons. Where a project owner does not grant an exemption for a religious-based dietary practice, the owner must offer an alternative menu that does not conflict with the tenant's religious dietary practice.

(c) Any exemption granted under this section (including the temporary exemption referred to in paragraph (a)(4) of this section) shall only be in effect during the period that the tenant meets the specified conditions for the exemption.

(d) Where, before April 1, 1987, a project owner has granted to any tenant an exemption from purchasing meals under the program, the exemption will remain valid during the period that the tenant meets the specified conditions for the exemption.

§ 278.14 Tenant incapacity.

(a) The project owner shall provide for the serving of meals in a tenant's dwelling unit if the tenant is temporarily immobile or otherwise incapable of participating in the mandatory meals program in the central dining facility. After one month of serving meals in an incapacitated tenant's dwelling unit, a project owner shall either continue serving meals in the tenant's dwelling unit during the period of incapacity or grant a temporary exemption for the tenant from the mandatory meals program. (See § 278.20(h) for allowable additional charges for special meals service under this section after the initial one-month period.)

(b) Where a tenant is permanently immobile or otherwise incapable of visiting the central dining facility, the project owner shall either continue the tenant's participation in the madatory meals program but provide for the tenant's meals to be served in his or her dwelling unit, or grant an exemption from the mandatory meals program. (This paragraph is not intended to describe the requirements of section 504 of the Rehabilitation Act of 1973.)

(c) A tenant's use of a wheelchair, walking support, or similar equipment to enable the tenant to visit the central dining facility may not be considered as conclusive evidence of the tenant's temporary or permanent incapacity.

Subpart C—Program Management

§ 278.20 Cost management.

(a) A project's mandatory meals program shall be operated as a non-profit operation. Project owners shall not use income from the meals operations to subsidize other project costs, nor use project rental income (including HUD housing assistance payments) to subsidize costs associated with purchasing, preparing, or serving meals. However, a project owner may contract with a commercial firm to provide meals to the project's tenants, and that commercial firm may operate the meals service on a for-profit basis. To qualify under this provision, the commercially provided meals must:

(1) Be served in the central dining facility of the project, and

(2) Be comparable, in cost to the program participants, to the cost of mandatory meals served in other HUD-assisted projects in the local area, or if there are no other mandatory meals programs in HUD-assisted projects in the local area, to meal charges in comparable projects in the local area.

(b) With HUD approval, tenants may be charged a specific amount per month for participation in a mandatory meals program. The amount charged for mandatory meals shall be limited to the per capita cost associated with purchasing the food products and with preparing and serving the meals. Neither operating expenses related to equipment purchase (or replacement) or the maintenance of the central dining facility (including labor, utilities, and the maintenance of equipment) nor the project's debt service may be included in the meal charges.

(c) Charges under a mandatory meals program are not rent and must be accounted for in the project's accounting system as a separate revenue

item. A tenant may, however, pay for both rent and meal charges with one monthly payment. Project owners shall maintain separate accounting records for expenses and account balances directly related to the mandatory meals operations.

(d) A private owner may not increase charges for participation in a mandatory meals program without prior written approval from HUD. A request for such an increase must be submitted in writing to HUD with adequate supporting documentation, as determined by HUD.

(e) If a mandatory meals program achieves an operating surplus at the end of a project's fiscal year, the project owner must use the surplus funds—

(1) To offset operating deficits created from previous years of mandatory meals operations (including years that preceded the effective date of this part);

(2) To offset projected increases in meals charges for the next fiscal year; or

(3) To reduce meals charges for the next fiscal year.

(f) Project owners shall take action to limit the per capita cost of mandatory meals by allowing eligible tenants to pay for meal charges with food stamps (in accordance with regulations of the U.S. Department of Agriculture at 7 CFR Parts 271 through 278) and by participating in surplus food programs (in accordance with regulations of the U.S. Department of Agriculture at 7 CFR Part 250).

(g) Project owners may take action to limit the per capita cost of mandatory meals by raising funds from other sources, including but not limited to, soliciting subsidies from State and local governments or donations from businesses or charitable organizations, and sponsoring fund-raising events where State or local jurisdictions permit.

(h) No additional charge for the initial one-month period of physical incapacity may be imposed by project owners for delivering meals to an incapacitated tenant's dwelling unit as required under § 278.14. After the initial one-month period, if the incapacitated tenant requests in writing that the meals service continue to that tenant's dwelling unit, the owner may charge up to one dollar per meal to offset administrative costs for that service.

§ 278.22 Lease provisions.

(a) A separate contract shall be executed explaining a tenant's obligations under a project's mandatory meals program. This contract will be incorporated as part of the tenant's lease, and substantial failure by a tenant to comply with the mandatory meals agreement will be a violation of the lease and will subject the tenant to eviction procedures in accordance with the lease.

(b) The mandatory meals agreement must specify the number of meals required, the duration of the meals agreement, and the charges for the meals at the time the agreement is signed. The agreement must incorporate by reference the requirements of this part, and shall be signed and executed by the tenant and the owner.

(c) Owners of HUD-assisted projects with mandatory meals program shall revise lease agreements to implement the requirements of this part as the term of each lease comes due for renewal or not more than 12 months from the effective date of this part.

Subpart D—Enforcement

§ 278.30 Noncompliance.

Where HUD determines that a project owner has failed substantially to comply with the requirements of this part, HUD shall take appropriate action, which may include the withdrawal of the Department's approval of the project's mandatory meals program. Within 30 days after the date of HUD's notice to the project owner of the withdrawal of the Department's approval, the project owner shall notify its tenants in writing that the meals program is no longer mandatory.

SUBCHAPTER E—GRANT PROGRAMS

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

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AUTHORITY: Sec. 611, Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 54 FR 22258, May 22, 1989, unless otherwise noted.

Subpart A—General

§ 280.1 Applicability and scope.

(a) *General.* This part establishes the Nehemiah Housing Opportunity Grants Program (NHOP) contained in Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Under this Program, HUD is making grants to nonprofit organizations to be used to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program under this part.

(b) *Purpose.* The purposes of NHOP are:

(1) To encourage homeownership by families who are not otherwise able to afford homeownership;

(2) To undertake a concentrated effort to rebuild the depressed areas of cities and to create sound and attractive neighborhoods; and

(3) To increase the employment of residents of these neighborhoods.

§ 280.5 Definitions.

As used in this part:

Applicant means a nonprofit organization that submits an application for assistance under this part. The term applicant includes two or more nonprofit organizations submitting a joint application.

Assistance means grants to recipients for the purpose of providing loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

Contiguous parcels of land mean parcels of land that:

(a) Abut;

(b) Are divided only by natural or man-made boundaries (such as streets, rights-of-way, or similar divisions); or

(c) Are closely located. For the purposes of paragraph (c) of this definition, parcels will be considered to be closely located if:

(i) The majority of homes to be constructed or substantially rehabilitated in the neighborhood are located on parcels that:

(A) Abut;

(B) Are divided by natural or man-made boundaries (such as streets, rights-of-way, or similar divisions); or

(C) Are divided by a small number of lots that do not, in the Secretary's determination, detract from the objective of fostering a concentrated effort to rebuild depressed areas and to

reate sound and attractive neighborhoods; and

(ii) The remaining homes to be constructed or substantially rehabilitated in the neighborhood are located on parcels in one or more areas, in which the parcels for each such area:

(A) Meet the requirements of clause (A), (B) or (C) of paragraph (c)(i) of this definition; and

(B) Are separated from the parcel referred to in paragraph (c)(i) of this definition by a distance, at the closest point, of no more than two city blocks (exclusive of any natural or man-made boundary).

Date of purchase means the date that a family executes a sales contract for the purchase of a home under this part.

Financial and other contributions to the program means financial or other contributions that result in program cost reductions that will be reflected in the sales price of the homes purchased under the program, or that result in the reduction of carrying charges to families purchasing homes under the program. Such contributions include (but are not limited to) cash contributions to the program; the waiver or modification of construction, development, or zoning requirements by units of general local government; the provision of no-interest or below-market interest construction loans; "in kind" donations of land, structures, equipment, materials or supplies; home loan programs that provide below-market interest rates, or principal or interest payment reductions to families purchasing homes under the program; and property tax abatement offered by a State or a unit of general local government to families purchasing homes under the program. Such contributions do not include: the time or services contributed by volunteers, or contributions provided with funds obtained through a federally assisted program, except for contributions made available under the Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*).

Home means a one- to four-family dwelling. The term includes dwelling units in a condominium project that consists of not more than four dwelling units, dwelling units in a cooperative project that consists of not more than four dwelling units, townhouses, and manufactured homes.

HUD means the United States Department of Housing and Urban Development.

Metropolitan statistical area means a metropolitan statistical area or a primary metropolitan statistical area established by the Office of Management and Budget.

Neighborhood means an area that is distinguishable from other areas on the basis of one or more significant features such as:

(a) Natural or man-made boundaries;

(b) A locally recognized name, formal or informal;

(c) An identity as a residential subdivision;

(d) An identity as an elementary school district; or

(e) Distinctive population, social, or housing characteristics.

Nonprofit organization means a private nonprofit corporation or other private nonprofit legal entity. No part of the net earnings of the organization may inure to the benefit of any member, founder, contributor, or individual. The organization (a) may not be controlled by, or be under the direction of, persons or firms seeking to derive profit or gain from the organization; (b) must have a voluntary board; and (c) must have a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code of 1986. Nonprofit organization does not include a public body or the instrumentality of any public body.

Program means the undertaking by a recipient with HUD assistance under this part for the construction or substantial rehabilitation of homes in accordance with the requirements of this part.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to carry out a program under this part.

Rehabilitation means labor, materials, tools and other costs of improving buildings, including repair directed toward an accumulation of deferred

maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Substantial rehabilitation means: (a) Rehabilitation involving costs in excess of 60 percent of the maximum sales price of a home assisted under this part after rehabilitation; or (b) the rehabilitation of a vacant, uninhabitable structure.

Unit of general local government means a borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

§ 280.10 Waiver.

The Secretary of HUD may waive any requirement of this part that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and must be supported by documentation of the pertinent facts or grounds.

Subpart B—Assistance Provided

§ 280.100 NHOP assistance.

(a) *General.* HUD will provide assistance to recipients in accordance with the requirements of this part. Recipients may only use assistance under this part to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

(b) *Amount.* The amount of assistance provided to any recipient under this part may not exceed $15,000 for each home purchased by an eligible family under an approved program.

§ 280.103 Assistance under other HUD programs.

Except for assistance made available under the Community Development Block Grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), a recipient's program is not eligible for assistance under other HUD assistance programs. Dwellings purchased under the program are eligible for mortgage insurance under section 203(b) (one- to four-family home mortgages), section 203(k) (rehabilitation of one- to four-family homes), section 221(d)(2) (low- and moderate-income families), section 234(c) (condominium mortgages), section 245(a) (graduated payment mortgages), and section 251 (adjustable rate mortgages) of the National Housing Act.

Subpart C—Program Eligibility Requirements

§ 280.105 Program size.

(a) *Number of homes.* The minimum number of homes that must be constructed or substantially rehabilitated under a program will depend on the number of existing dwelling units that are located in the unit of general local government in which the program is to be carried out. If the program is to be carried out within the jurisdiction of more than one unit of general local government, the number of existing dwelling units will be those located in the unit of general local government that provides the greater, or if appropriate the greatest, amount of financial and other contributions to the program. For the purposes of programs under this part, the minimum number of homes is:

(1) 250, if there are more than 100,000 existing dwelling units in the relevant unit of general local government;

(2) .25 percent of the number of existing dwelling units in the relevant unit of general local government, if the number of existing dwelling units in the unit of general local government is between 20,000 and 100,000; or

(3) 50, if there are less than 20,000 existing dwelling units in the relevant unit of general local government.

(b) *Exception.* HUD may waive the program size requirement in paragraph (a) of this section, if the chief elected official of the unit of general

local government that provides the greatest amount of financial and other contributions to the program, or the Governor of the State in which the program is to be located, requests a waiver and certifies, with supporting documentation, that the program size requirement will prevent the State or the unit of general local government from using the program effectively. HUD will determine that the program size requirement would prevent the effective use of the program if:

(1)(i) The projected market demand for the homes is insufficient to support a program of the size required;

(ii) Structures cannot be made available for rehabilitation and a sufficent amount of land cannot be made available for new construction, at a reasonable cost, to support a program of the size required;

(iii) The financial and other contributions available to the program are insufficient to support a program of the size required; or

(iv)—(v) [Reserved]

(vi) The amount of mortgage financing available if insufficient to support a program of the size required;

(2) The construction or substantial rehabilitation of a program of the proposed size will result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs eligible for assistance under this part. (Such cost reductions include (but are not limited to) economies of scale in construction, in compliance with State and local laws and regulations, and in legal, architectural, engineering and sales costs); and

(3) The program, by itself or together with improvement efforts that are or will be undertaken in the neighborhood by units of general local government or private entities, will result in a substantial improvement in the overall quality and long-term viability of the neighborhood. Other improvement efforts may include that construction or rehabilitation of other structures (including commercial properties and subdivisions), improvements to public facilities or services, or the expansion of private enterprise in the neighborhood.

(c) *Number of dwelling units.* For the purposes of this section, the number of existing dwelling units in the unit of general local government means the number of housing units in the unit of general local government, as reported in the most recent decennial Census. HUD will use the Census number unless the applicant submits a revised estimate and supporting documentation demonstrating that the number of housing units has changed significantly since the most recent decennial Census.

§ 280.110 Program location.

(a) *Census tract or neighborhood income limitations.* All homes constructed or substantially rehabilitated under a program must be located in Census tracts, or in neighborhoods (within Census tracts), in which the median family income does not exceed 80 percent of the median family income of the area in which the program is to be located. Median family income will be determined as follows:

(1) For the purpose of determining the median family income of the area in which the program is to be located, HUD will use the median family incomes derived from the most recent decennial Census and the areas established for Section 8 of the United States Housing Act of 1937.

(2) For the purpose of determining the median family income for Census tracts, HUD will use the tract definitions and median family income data reported in the most recent decennial Census, unless the applicant demonstrates that the Census data does not reflect the current median family income of the tract. The applicant must submit appropriate supporting documentation, including a revised estimate of median family income for the tract; an explanation of the methods used to compute the revised estimate; and a description of the social and economic changes causing the median family income change.

(3) If the homes are located in a Census tract that does not meet the median family income requirements, the applicant may demonstrate that the homes will be located in a neighborhood (within a Census tract) that meets these median family income limitations. The applicant must

submit appropriate supporting documentation, including an estimate of the median family income for the neighborhood; an explanation of the methods used to compute the estimate; and a description of the social and economic factors that cause the median family income for the neighborhood to be less than the median family income of the Census tract. In computing neighborhood median family income, applicants should rely, to the extent practicable, on block group data reported in the most recent decennial Census.

(b) *Neighborhood requirements.* (1) Except as provided under paragraph (b)(2) of this section, all homes constructed or substantially rehabilitated under a program must be located in one neighborhood and must be located on contiguous parcels of land.

(2) Homes constructed or substantially rehabilitated under a program may be located in up to four neighborhoods, if the following requirements are met:

(i) All homes to be constructed or substantially rehabilitated within each neighborhood are located on contiguous parcels of land;

(ii) Each unit of general local government in which the program is to be located certifies that land cannot be made available, at a reasonable cost, in a single neighborhood for a program of the size required under § 280.105.

(iii) The applicant submits evidence demonstrating that construction or substantial rehabilitation in the neighborhoods will result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs eligible for assistance under this part. (Such cost reductions include (but are not limited to) economies of scale in construction, in compliance with State and local laws and regulations, and in legal, architectural, engineering and sales costs).

(iv) The applicant submits evidence demonstrating that the program, by itself or together with improvement efforts that are or will be undertaken in the neighborhoods by units of general local government or private entities, will result in a substantial improvement in the overall quality and long-term viability of the neighborhoods. Other improvement efforts may include the construction or rehabilitation of other structures (including commercial properties and subdivisions), improvements to public facilities or services, or the expansion of private enterprise in the neighborhoods.

§ 280.115 Home quality.

(a) *Generally.* Except for manufactured homes, homes constructed or substantially rehabilitated under a program must comply with applicable local building code standards. (If no local building code standards are applicable, the homes must comply with a nationally recognized model building code (such as the CABO One- and Two- Family Dwelling Code) mutually agreed upon by the recipient and HUD). All such homes must also comply with the energy performance requirements contained in the minimum property standards under 24 CFR Part 200 Subpart S.

(b) *Manufactured homes.* Manufactured homes under a program must comply with the Manufactured Home Construction and Safety Standards in 24 CFR Part 3280; the installation, structural, and site requirements described in 24 CFR 203.43f; and the energy performance requirements of 24 CFR 200.926d(e).

Subpart D—Application and Selection Procedures

§ 280.200 Notice of fund availability.

HUD will periodically publish a Notice Of Fund Availability in the FEDERAL REGISTER. The Notice will:

(a) Explain how application packages providing specific application requirements and guidance may be obtained;

(b) Specify the place for filing completed applications, and the date by which the applications must be physically received at that location;

(c) State the amount of funding available under the Notice;

(d) Specify the maximum number of points that may be awarded under each of the ranking criterion described in § 280.220, and the commercial construction cost indices and data that

will be used under ranking criteria described in § 280.220(b) (3) and (5).

(e) Provide other appropriate program information and guidance.

§ 280.205 Application requirements.

(a) *General.* Applicants must submit applications for assistance in the form and within the time periods established by HUD.

(b) *Application requirements.* At a minimum, HUD will require applications to include:

(1) Applicant data (identity, evidence of eligibility and capacity to carry out program activities, legal authority to submit the application and to participate in the program, and information necessary to demonstrate financial responsibility).

(2) A description of the proposed program, including:

(i) *The program location.* The applicant must identify the Census tracts, neighborhoods, and parcels of land where the program will be located. The applicant must demonstrate that the program will be located in one neighborhood or must provide the information necessary to meet the requirements of § 280.110(b)(2). In addition, the application must include evidence demonstrating the extent of physical and economic blight in each neighborhood, must describe any improvement efforts undertaken or to be undertaken by units of general local government or private entities in the neighborhoods, and must describe the improvements in the quality and viability of the neighborhoods that will result from the proposed program and other efforts (see § 280.220(b)(4)).

(ii) *Number of homes.* The applicant must identify the number of homes that will be constructed or substantially rehabilitated under the program. If waiver of the program size limitation is sought, the application must include a waiver request and certification as described in § 280.105(b).

(iii) *Architectual drawings.* The application must include a site plan, and floor plans for typical units to be constructed or substantially rehabilitated under the program.

(iv) *Substantial rehabilitation and construction.* The application must include a description of the proposed construction and substantial rehabilitation. If the program involves substantial rehabilitation, the applicant must identify all existing structures that will be used in the program, describe the proposed rehabilitation activities, and demonstrate that the proposed rehabilitation activities will constitute substantial rehabilitation.

(v) *Compliance with home quality standards.* The applicant must certify that the proposed program will comply with the home quality standards contained in § 280.115.

(vi) *Compliance with site control and zoning requirements.* The applicant must demonstrate that the program will meet the site control and zoning threshold described at § 280.215(b)(7).

(3) Program financial data. The applicant must provide specific information on program costs and financing including:

(i) Total program development costs.

(ii) Sources and applications of all funds that will be used in the development of the program.

(iii) The source and amount of financial and other contributions to the program. For financial and other contributions to the program that will be made by entities other than the applicant, the application must provide firm commitments to provide the contributions to the program. The firm commitment must demonstrate the source's binding commitment to provide the contribution and the date upon which the contribution will be made available. The commitment may be contingent upon the applicant's selection for funding under this part.

(A) If "in kind" contributions are made to the program, the application must include documentation supporting the valuation of the property. If real property is contributed, the supporting documentation must include an appraisal, acceptable to HUD, prepared by a real estate appraiser.

(B) If State or local governmental entities are prohibited from making a financial or other contribution to the program by State law, the application must identify the State law prohibiting the contribution.

(iv) Projected annual budget for each year until program completion.

(v) The amount of assistance requested under this part.

(4) Need. The application must include evidence of the demand for homes under the proposed program in the area to be served by the program. Housing demand may be demonstrated with a market analysis prepared by a reliable, knowledgeable source. Applicants are not required to submit commercially prepared market studies.

(5) A program schedule. The applicant must submit an estimated schedule for completion of the proposed program, including the dates of the commencement and completion of construction and substantial rehabilitation of any display homes; the date that homes will first be offered for sale; and the dates of the commencement and completion of construction and substantial rehabilitation of nondisplay homes. In addition, the applicant must submit evidence that each unit of local government in which the program is to be located has approved of the program schedule.

(6) Home sales description. The application must describe the applicant's home sales process, including the proposed marketing procedures, procedures for determining family eligibility, a copy of the proposed sales contract, the downpayment requirements, the projected sales prices of homes, and settlement procedures. The application should indicate whether the applicant is seeking a modification of the family income limitations under § 280.315(a).

(7) Local participation. The applicant must demonstrate that the local consultation requirements of § 280.215(b)(5) have been met, and must provide a narrative statement describing the involvement of neighborhood residents in the development of the proposed program, the likelihood of continued neighborhood resident participation in program activities following selection of the program, and the planned employment of neighborhood residents in the construction or substantial rehabilitation of the program.

(8) Drug-free workplace certification. The applicant must certify that it will comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and provide a drug-free workplace.

(9) Additional data. (i) If the application states that the number of housing units in a unit of general local government has significantly changed since the most recent decennial Census, the applicant must provide the additional information described at § 280.105(c).

(ii) If the application states that the most recent decennial Census does not reflect the current median family income for a Census tract, the applicant must provide the additional information described in § 280.110(a)(2).

(iii) If the homes will be located in a Census tract that does not meet the median family income requirements of § 280.110(a), but the homes will be located in a neighborhood that does meet these requirements, the applicant must provide the additional information described in § 280.110(a)(3).

(10) Other data as prescribed by HUD.

§ 280.207 Other Federal requirements.

The applicant (or recipient) must assure that the following additional requirements are met:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to NHOP include:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3620) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities; and

(6) The affirmative fair housing marketing requirements at 24 CFR Part 200, Subpart M, and the implementing regulations at 24 CFR Part 108.

(7) Racial and ethnic data collection requirements. Recipients must maintain current data on the race and ethnicity of program beneficiaries.

(b) *Displacement and relocation assistance.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 CFR Part 24 set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a program assisted under this part.

(2) A displacement from the real property is covered by the URA if it occurs on or after the date that an application is submitted under this part and the application is later approved and funded, unless:

(i) The person has been evicted for cause based upon a serious or repeated violation of the material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the real property after the application was submitted, but received prior written notice of the expected displacement;

(iii) The person is an owner-occupant and has been informed that the real property will not be acquired for the program under the threat of eminent domain; or

(iv) The applicant (recipient) determines that the displacement did not occur as a direct result of the acquisition, rehabilitation, or demolition for the program, and HUD concurs in that determination.

(3) If a person is displaced from the real property before the submission of the application, and either HUD or the applicant (recipient) determines that the displacement was a direct result of the acquisition, rehabilitation, or demolition, the person shall be eligible for relocation assistance as a displaced person.

(4) The applicant (recipient) may, at any time, request a HUD determination whether a displacement will be covered by the URA and the implementing regulations.

(5) A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR Part 24.

(c) *Flood insurance purchase requirements.* Grants will not be provided to programs involving the acquisition or rehabilitation of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as a special flood hazard area, unless: (1) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations under that program (44 CFR Parts 59 through 79); or (2) less than a year has passed since FEMA notification regarding such hazards. A recipient may not make a loan under this part involving buildings located in these areas unless flood insurance on the structure is obtained by the purchaser in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et. seq.*).

(d) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-110 and A-122 apply to the acceptance and use of assistance by nonprofit organizations.

(e) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (e)(2), of this section apply to the program.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this part. This paragraph is promulgated under 24 CFR 35.24(c)(4) and supersedes, with respect to assistance under this part, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that are occupied or are expected to be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (e):

Applicable surface means all interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age: e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: i.e., a confirmed concentration of lead in whole blood of 25 μg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(iii) In the case of a structure constructed or substantially rehabilitated before 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. If defective paint surfaces are found, treatment in accordance with 24 CFR(b)(2)(ii) is required. Correction of defective surfaces found during the inspection must be completed before initial occupancy of the structure.

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that the family purchasing a home under the program includes a child under the age of seven years who has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified by a State or local health or housing agency, or by an association recognized by HUD. Lead content must be tested by using an X-ray flourescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect residents of the structure from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for an least three years. If a unit requires testing or treatment of chewable surfaces based on the testing, the recipient must submit the test results and, if applicable, the certification of treatment to HUD. HUD will retain the records in the recipient's case file. The records must indicate which chewable surfaces in the units have been tested or treat-

ed. If records establish the certain chewable surface were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated as any subsequent time.

(3) The applicant or recipient, however, must ensure that the program sponsor carries out all requirements in accordance with the paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(f) *Conflicts of interest.* No person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to activities under the program or (2) who is in a position to participate in a decisionmaking process of gain inside information with regard to such activities, may obtain a personal or financial interest of benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. The provisions of paragraph (e)(1) of this section do not prohibit a non-managerial and nonsupervisory employee who is otherwise eligible, from purchasing a home under this part.

(g) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(h) *Audit.* Recipients are subject to the audit requirements of OMB Circular A-110. HUD may perform or require further and additional audits as it finds necessary or appropriate.

(i) *Coastal Barriers Resources Act.* The Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) applies to the program.

(j) *Davis-Bacon Act.* The prevailing wage rate determinations under the Davis-Bacon Act (40 U.S.C. 276a–276a-5) do not apply to the program.

(k) *Drug-Free Workplace.* The Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D) and HUD's implementing regulations at 24 CFR Part 24 (Subpart F) apply to NHOP recipients.

§ 280.210 Selection process.

The section process for applications for assistance under this part has three stages: (a) the threshold stage (see § 280.215); (b) the ranking stage (see § 280.220); and (c) the final selection stage (see § 280.225).

§ 280.215 Threshold requirements.

(a) *General.* To be eligible for evaluation under the ranking criteria set out in § 280.220, applications must meet each of the threshold criteria described below. Applications that fail to meet all threshold criteria will not be eligible for assistance under this part.

(b) *Threshold criteria.* The threshold criteria are:

(1) *Form, time and adequacy of the application.* The application must be filed in the application form prescribed by HUD under § 280.205, and within the time period established by HUD in the notice of funds availability under § 280.200.

(2) *Applicant*—(i) *Eligibility to receive assistance.* The applicant must demonstrate that it is a nonprofit organization. An applicant will meet this threshold requirement if it demonstrates that it applied for a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code of 1986 before the submission of its application. However, assistance will not be provided until an effective tax exemption ruling has been issued by the Internal Revenue Service.

(ii) *Financial responsibility.* The applicant must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider the applicant's ability to maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

(iii) *Capacity.* Each applicant must demonstrate that it has the ability to carry out activities under the program

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within a reasonable time after execution of the grant agreement with HUD, and in a successful manner. In making this determination, HUD will consider the extent and quality of the applicant's past experience in developing or administering program similar to the proposed program. HUD will also consider the ability of applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and administration of the proposed program.

(iv) *Legal authority.* Each applicant:

(A) Must demonstrate that it has the legal authority to participate in the program and to carry out activities in accordance with program requirements, and the requirements of other applicable Federal law.

(B) Must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of the application under this part.

(3) *Program eligibility.* The applicant must demonstrate that the program meets the program size, location and home quality requirements described under Subpart C of this part, and that the sales contract will meet the requirements described at § 280.320

(4) *Need.* The applicant must demonstrate that there is a demand for homes in the area to be served by the program among eligible purchasers and that this demand is or will be sufficient to ensure the sale of all homes constructed or substantially rehabilitated under the program consistent with the program schedule submitted under § 280.205(b)(5).

(5) *Local consultation requirements.* (i) The applicant must demonstrate that it has consulted with, and received the support of, residents of the neighborhood in which the program is to be located. At a minimum, the applicant must demonstrate that it provided a description of the program to the residents of the neighborhood and requested their comments on the proposal. The method used by the applicant to furnish information to the residents must be designed to ensure that all residents receive actual or constructive notice of the program d scription and the request for co ments. Constructive notice is public tion at least once a week for two co secutive weeks in a newspaper of ge eral circulation serving the neighbo hoods in which the program will be lo cated. Support of the residents may b demonstrated by such documents as summary of all comments received t the request, the transcript of any public meeting, and affidavits of sup port submitted by local residents o the neighborhood.

(ii) The applicant must also submit a written statement signed by the chief elected official of each unit of general local government in which the program is to be located, stating that the unit of general local government approves of the proposed program.

(6) *Financial feasibility of the program.* The applicant must demonstrate that the proposed program is financially feasible. In determining financial feasibility, HUD will consider: (i) the sources and amounts of financial or other resources that will be used to carry out the program (including the availability of financial and other contributions to the program); and (ii) the total projected program costs.

(7) *Siting and zoning.* Applicants must meet the following siting and zoning requirements at the time of the application:

(i) The applicant must demonstrate that it has control of the site involved. The applicant must demonstrate that it owns or has an option to purchase the properties involved, or has a long-term lease or has an option on a long-term lease on such properties.

(ii) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully within six months following the submission of the application.

(8) *Environmental review.* (i) HUD will assess the environmental effects

of each proposal in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's regulations at 24 CFR Part 50 which implement NEPA, the National Historic Preservation Act, and the other environmental authorities cited at 24 CFR 50.4. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have an unavoidable significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) will not be eligible for assistance under this part. This review is not intended to prohibit or discourage the use of historic property. The use of historic property in the proposed program or the presence of an historic property in the proposed program area alone will not constitute an unavoidable significant impact on the human environment requiring the preparation of an EIS.

(ii) The environmental review may reveal information not contained in the application that may have relevance to the selection process. HUD will consider such relevant information under the appropriate threshold and ranking criteria.

§ 280.220 Ranking criteria.

(a) *In general.* Applications that fulfill each of the threshold requirements of § 280.215 will be assigned a rating score and will be placed in ranked order, based upon the criteria described in paragraph (b) of this section. The number of points that will be awarded under each ranking criterion will be announced in the Notice Of Fund Availability under § 280.200. The maximum number of points possible under each ranking criterion will be not less than 10 percent of the maximum number of total points possible under all of the ranking criteria.

(b) *Criteria.* The ranking criteria are:

(1) *Contributions of land.* (i) HUD will consider the extent to which non-Federal public and private entities have contributed or will contribute land necessary to make the program feasible. To be considered under this criterion, the contribution of land must meet the definition of financial and other contributions to the program as described in § 280.5.

(ii) For the purposes of this criterion, land is necessary to the feasibility of the program if the land is used to provide individual lots for homes constructed or substantially rehabilitated under the program. Other contributions of land, such as land that will be used for parks, green spaces, or lots to support community facilities, are not necessary to the feasibility of the program and will not be considered under this criterion. Such contributions, however, may be considered if the requirements of paragraph (b)(2) of this section are met.

(iii) HUD will award the maximum number of points to applications that involve programs for which all land necessary to the feasibility of the program will be contributed from such sources.

(2) *Other contributions.* (i) HUD will consider the extent to which non-Federal public or private financial and other contributions to the program will reduce the cost to families purchasing homes constructed or substantially rehabilitated under the program. Programs that receive such contributions under a State-designated enterprise zone program will receive additional points under this criterion. For the purpose of this criterion, a State-designated enterprise zone means an area that is designated in accordance with a State law, State executive order, or State plan that recognizes distressed areas and encourages or offers incentives for private investment that will create jobs and assist in the economic revitalization of the area.

(ii) Donations of land will not be considered under this criterion to the extent that such donations are considered under paragraph (b)(1) of this section.

(iii) HUD will assign the maximum number of points under this criterion to applications: that involve financial and other contributions to the program that will result in the greatest reduction in purchase price and carrying charges to families purchasing homes constructed or substantially re-

habilitated under the program; and that will receive such contributions under a State-designated enterprise zone program.

(3) *Cost effectiveness.* HUD will consider the degree to which each program will produce the maximum number of homes for the least amount of assistance under this part, taking into consideration cost differences among different market areas. For each application, HUD will: (i) adjust the amount of requested assistance to eliminate cost differences between market areas by applying a commercial construction cost index selected by HUD and announced in the Notice Of Fund Availability under § 280.200; and (ii) divide the adjusted assistance by the number of homes to be constructed or substantially rehabilitated under the program. Applications that have the smallest adjusted assistance average will receive the maximum number of points under this criterion.

(4) *Neighborhood blight.* (i) HUD will consider the degree of the physical and economic blight in the neighborhoods in which the program is located. In determining the degree of physical blight, HUD will consider the condition (but not the age) of existing housing, other buildings, and the infrastructure in the neighborhoods. In assessing the degree of economic blight, HUD will consider such factors as the unemployment rate, median family income and crime rate in the neighborhoods. HUD will assign the maximum number of points under this factor to applications that demonstrate the greatest degree of physical and economic blight.

(ii) HUD will also consider the impact that the proposed program, by itself or together with improvement efforts that are or will be undertaken in the neighborhoods by units of general local government or private entities, will have upon the quality and viability of the neighborhoods. Other improvement efforts may include the construction or rehabilitation of other structures, improvements to public facilities or services, or the expansion of private enterprise in the neighborhoods. HUD will assign the maximum number of points under this factor to applications that demonstrate that the program, by itself or together with other improvement efforts, will result in a substantial improvement in the overall quality and long-term viability of the neighborhood.

(5) *Construction cost.* HUD will consider the degree to which the applicant will use construction or rehabilitation methods that will reduce the cost per square foot for the proposed program below the average construction cost per square foot in the market area involved. HUD will determine: (i) the average construction cost per square foot in the market area of the proposed program by referring to a commercially available publication issuing construction cost data for the market area (the construction cost publication will be selected by HUD and announced in the notice of fund availability under § 280.200); and (ii) the average construction or rehabilitation cost per square foot of the program (as adjusted for cost reductions that are attributable solely to financial and other contributions to the program). HUD will award the maximum number of points under this criterion to the applications in which the average adjusted cost per square foot for the program is the smallest percentage of the average construction cost per square foot in the market area.

(6) *Local resident involvement.* HUD will consider the degree to which the program provides for the involvement of local residents of the neighborhood in the planning and construction or substantial rehabilitation of homes. Under this criterion, HUD will consider: (i) the extent to which residents of the neighborhood will be employed in the construction and substantial rehabilitation of homes in the program; (ii) the extent to which local residents, individually or through membership in local organizations, have advised or assisted the applicant in the development of the proposed program, or have participated on committees or governing boards of the applicant involved in the development of the proposed program; and (iii) the likelihood of continued participation by local residents in program activities following selection. The maximum number of points under this criterion will be

awarded to applicants that demonstrate: a commitment to employ a significant number of local residents in the construction or substantial rehabilitation of homes in the program; a significant past commitment by local residents to the development of the program; and a strong likelihood that this level of commitment to the program will continue through program completion.

(c) *Exception.* If State or local governmental entities are prohibited by State law from making a financial or other contribution to a program and the contribution would be eligible for consideration under the criterion described at paragraph (b) (1) or (2) of this section, HUD will not penalize an applicant under the ranking process for the lack of such a contribution to the program.

§ 280.225 Final selection.

In the final stage of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under § 280.220. If the highest-ranked applications involve programs that predominantly serve one geographic area, HUD may substitute one or more other highly-ranked applications to ensure reasonable geographic variety in the program. Upon completion of final selection, HUD will notify each successful applicant of its selection. HUD will also notify each unsuccessful applicant that it has not been selected, and will provide the unsuccessful applicant with an explanation for the denial of the application.

Subpart E—Program Operation

§ 280.300 Obligation of funds.

When HUD selects an application for funding, it will obligate sufficient amounts for a grant to cover the aggregate amount of the loans proposed under the selected program.

§ 280.305 Grant agreement.

(a) *General.* The recipient's responsibilities under NHOP will be incorporated in a grant agreement excecuted by HUD and the recipient.

(b) *HUD Monitoring.* HUD will monitor the recipient's performance to determine whether the recipient is complying with the requirements of the grant agreement. HUD will rely on such data as information obtained from the recipient's records and reports, findings from on-site monitoring and audit reports.

§ 280.305 Minimum participation.

The recipient may not begin the construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments required under § 280.320(b) are made. However, the recipient may construct and substantially rehabilitate homes for the purpose of display to potential homeowners. The maximum number of display homes is limited to five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes, where the program involves less than 60 homes.

§ 280.315 Eligible purchasers.

(a) *Income limitations.* (1) Each family purchasing a home constructed or substantially rehabilitated under a program must have a family income on the date of purchase that does not exceed the following limitations:

(i) For programs located in a metropolitan statistical area, the family income may not exceed the higher of:

(A) The median family income for the metropolitan statistical area in which the program is located. At any time during the development of the program, the recipient may request HUD to modify this family income requirement. To obtain a modification, the recipient must submit a request by a unit of general local government in which the program is located, and supporting documentation demonstrating to HUD that such action is necessary to achieve or maintain neighborhood stability. If a modification is granted, HUD may permit up to 15 percent of the families that purchase homes under this part, to have a family income on the date of purchase that is

between 100 and 115 percent of the median family income for the metropolitan statistical area.

(B) The national median income.

(ii) For programs that are not located in a metropolitan statistical area, the family income may not exceed the national median income.

(2) For the purpose of determining the median family income for the nation and metropolitan statistical areas, the recipient must use the most recent median family incomes developed by HUD under Section 8 of the United States Housing Act of 1937. Family income is the annual income as computed in accordance with 24 CFR 813.106.

(b) *Homeownership.* No member of a family purchasing a home constructed or substantially rehabilitated under the program may have owned a home at any time during the three years before the date of purchase.

§ 280.320 Sales contract and downpayment requirements.

(a) *Sales contract.* The recipient and each family purchasing a home constructed or substantially rehabilitated under the program must execute a sales contract. The sales contract shall contain appropriate terms and conditions covering the purchase of the home and must contain:

(1) The downpayment provisions described in paragraph (b) of this section;

(2) The repayment provisions described at § 280.330 of this part.

(3) Such other terms and conditions as HUD may require.

(b) *Downpayment.* Each family purchasing a home constructed or substantially rehabilitated under the program must provide a downpayment. A governmental entity or instrumentality may not provide funds for the family's downpayment.

(1) *Amount.* The amount of the downpayment includes all cash contributions made by the family (e.g., contributions for settlement and closing costs). The total amount of the downpayment must be equal to 10 percent of the sales price of the home except:

(i) The recipient may require a downpayment that is greater than 10 percent of the sales price of the home, if the recipient has determined that a higher downpayment is appropriate.

(ii) The recipient may require a downpayment that is less than 10 percent of the sales price of the home, if the first mortgage on the home is to be held by a State or a unit of general local government under a home loan program provided by the State or unit of general local government, and the program provides for a lower downpayment.

(2) *Date of downpayment.* The downpayment must be made on the date required by the recipient. Under § 280.305, however, no construction or rehabilitation may be begun until at least 25 percent of the homes constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments are made.

(3) *Interest.* The recipient shall deposit the downpayment in an account with a federally insured bank, savings and loan institution or credit union. The recipient shall pay interest on the downpayment to the family from the date that downpayment is made through the date of settlement, at the actual rate of interest earned on the account. Under no circumstances may the interest rate paid to the family be lower than the lowest passbook rate of interest paid by a federally insured bank, savings and loan institution or credit union conducting business within the State in which the program is located.

§ 280.322 Loan requirements.

(a) *Loan requirements.* A loan made to a family purchasing a home constructed or substantially rehabilitated under the program:

(1) Must be secured by a second mortgage held by HUD on the property involved;

(2) May not exceed $15,000;

(3) May not bear interest;

(4) Is repayable to HUD upon the sale, lease, or other transfer of the property.

(5) Must be applied by the family to the purchase price of the home.

(6) May not be used by the family to provide the downpayment required under § 280.230.

(7) Is subject to such other terms and conditions as HUD may require.

(b) *Reimbursement of recipient.* Within 30 days after the date of purchase of a home with a loan under this part, HUD will provide the recipient with an amount equal to the amount of the loan.

§ 280.330 Repayment of loan.

(a) *Repayment.* A family purchasing a home with a loan under this part must repay the loan to HUD, if the family sells, leases, or transfers any interest in the property. If the family refinances the first mortgage and the refinancing is unrelated to a sale, equity withdrawal, lease or transfer of an interest in the property, the family will not be required to repay the loan. If the refinancing of the first mortgage involves an equity withdrawal, the family will be required to repay the loan to HUD to the extent of the withdrawal. To the extent that repayment is not required as a result of refinancing, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

(b) *HUD-approval.* (1) The family may request HUD approval of a sale, equity withdrawal or other transfer of the property without full repayment. Approval will be granted if HUD determines that an undue hardship will result from the application of the repayment requirement. Generally, HUD will make this finding only if the proceeds of the transaction are insufficient to repay the loan amount in full and approval will be granted only to the extent that the proceeds of the transaction are insufficient to repay the loan in full. HUD will not approve the lease of a home without repayment.

(2) To the extent that HUD approves a sale or transfer without repayment, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

§ 280.335 Funding amendments and deobligation of funds.

(a) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated.

(b) *Deobligation.* (1) HUD may deobligate amounts:

(i) If the amount of the loans provided under the program are less than the amount of the loans anticipated in the application; or

(ii) If the recipient fails to carry out activities under the program within a reasonable time after selection;

(2) If as a result of an audit, HUD determines that the recipient has expended funds for uses that are ineligible under this part, HUD may adjust or deobligate funding amounts, as appropriate, to recover the ineligible costs.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

SUBCHAPTERS F–H—[RESERVED]

SUBCHAPTER I—HUD OWNED PROPERTIES

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

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SOURCE: 44 FR 56609, Oct. 1, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 290.1 Purpose and scope.

The purpose of this part is to prescribe the basic policies which govern the management and disposition of HUD-owned multifamily housing projects by the Department of Housing and Urban Development. The intent of these regulations is to provide a disposition program which involves all interested parties and properly balances the interests of the tenants, the neighborhood, the local government, the FHA insurance funds, and furthers the policies of the National Housing Act.

§ 290.3 Applicability.

These regulations shall apply to the disposition and management of all HUD-owned multifamily housing projects, both those presently owned and those acquired in the future, except that (a) no existing management contracts or solicitations for management contracts past the point of advertisement shall be required to be reopened in order to bring them into compliance with these regulations; (b) property disposition recommendations already submitted to the Property Disposition Committee shall be processed under applicable instructions in effect at the time of submission; and (c) the time period for sending initial notices pursuant to § 290.33 for projects which are owned by HUD as of the effective date of these regulations shall commence 30 days after that effective date.

§ 290.5 Definitions.

(a) *Director.* The HUD field office Director, who is either an Area Office Manager in a HUD Area Office, or a Supervisor in a HUD Service Office who is delegated authority to process the disposition of multifamily projects.

(b) *Disposition.* The sale or conveyance by HUD of a HUD-owned multifamily housing project, or any part of

a project, including the demolition of structures.

(c) *Disposition analysis.* The data and analysis prepared by the Director or his or her staff as a basis for making a disposition recommendation.

(d) *Dispostion recommendation.* The Director's recommended disposition program for a project, including supporting information and the disposition analysis.

(e) *Eligible tenant.* A person or family legally occupying a rental unit in a HUD-owned multifamily housing project who qualifies for housing assistance payments pursuant to section 8 of the U.S. Housing Act of 1937, as amended.

(f) *Final disposition program.* The disposition program authorized by the appropriate Property Disposition Committee.

(g) *Formerly subsidized project.* A multifamily housing project in which the tenants received the benefits of any of the following subsidy programs immediately prior to HUD's acquisition of title to the project:

(1) Below market interest rate mortgages insured under section 221(d)(3) of the National Housing Act; or

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act; or

(3) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; or

(4) Direct loans at below market interest rates, pursuant to section 202 of the Housing Act of 1959, sections 401 and 404(b)(3) of the Housing Act of 1950, or section 312 of the Housing Act of 1964; or

(5) Housing assistance payments pursuant to section 23 of the United States Housing Act of 1937 in effect prior to January 1, 1975, or section 8 of the United States Housing act of 1937, except section 8 existing housing payments.

(h) *Formerly unsubsidized project.* A multifamily housing project which was not subsidized prior to HUD's acquisition under any of the programs listed in the definition of formerly subsidized project in paragraph (g) of this section.

(i) *HUD.* The Department of Housing and Urban Development.

(j) *Multifamily housing project(s) or Project(s).* Any property, or combination of properties, consisting of 5 or more living units, acquired by the Secretary as the result of a default under a regulatory agreement or under a mortgage insured or held by the Secretary pursuant to the National Housing Act or under a program involving a loan guarantee or a direct loan by the Secretary.

(k) *Nonprofit consumer cooperative corporation.* A legally chartered organization entirely owned by its voting membership which exists primarily to furnish goods and services to benefit its membership and which is not organized for the purposes of making profit or gain as determined by HUD.

(l) *Property Disposition Committee.* The designated group of HUD officials to whom is delegated the authority to approve final disposition programs for multifamily housing projects.

(m) *Secretary.* The Secretary of HUD or his or her designee.

(n) *Section 8.* An assistance program which provides housing assistance payments pursuant to section 8 of the U.S. Housing Act of 1937, as amended.

(o) *Subsidy.* An assistance program which provides housing assistance payments pursuant to section 8 or any other housing assistance program of the U.S. Housing Act of 1937, as amended, or any successor program.

(p) *Tenant.* A lawful occupant of a multifamily housing project.

(q) *Vacant land.* Property on which there are no structural improvements present.

§ 290.7 Waivers.

Upon completion of a determination and finding of good cause by the Assistant Secretary for Housing—Federal Housing Commissioner or his or her designee, HUD may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver shall be in writing supported by documentation of the facts and reasons which formed the basis for the waiver.

§ 290.9 State and Local Government Audits.

Where State or local governments receive financial assistance as defined in 24 CFR 44.2, audits shall be conducted in accordance with HUD audit requirements at 24 CFR Part 44.

[50 FR 39091, Sept. 27, 1985, and 51 FR 30480, Aug. 27, 1986]

Subpart B—Management Provisions

§ 290.10 Management objectives.

The management of HUD-owned multifamily housing projects shall be carried out in accordance with the objectives listed below:

(a) To provide a level of services necessary to maintain occupied housing in decent, safe and sanitary condition in the most cost efficient manner;

(b) To keep the present tenants in place to the greatest extent possible consistent with sound management practices;

(c) To maintain all vacant buildings and land in a way that eliminates health and safety hazards to the public and assures the proper security of the project;

(d) To provide and to occupy fully as many decent, safe, and sanitary dwelling units as possible, consistent with the need for the type and size of the units;

(e) To facilitate tenant involvement in decisions about the future disposition of the project.

§ 290.13 Project management.

Good management of HUD-owned projects is essential to the success of the multifamily housing preservation effort. Therefore, stringent qualification standards must be used in procuring management services for all projects.

(a) In contracting for services to manage its multifamily housing projects, HUD shall find a management proposal to be acceptable only if it meets the level and quality of services required under the qualification standards stated below.

(1) Satisfactory performance with respect to: (i) Managing properties similar in type and complexity; (ii) handling tenant and tenant group concerns; (iii) property upgrading, maintenance and preservation; (iv) maintaining expected levels of occupancy and rental collections; (v) tenant selection; (vi) effectiveness in developing and enforcing project policies; (vii) exercising sound business and administrative judgment; (viii) financial stability and reponsibility; (ix) compliance with State and local property management licensing requirements; and (x) any other management qualification specified by HUD which may be important to successful management of a specific project.

(2) Efficiency in providing management and services which adequately meet all project operating needs.

(3) The proposed management plan must meet HUD's prescribed requirements and address fully the needs of the residents and of the project and shall include a proposed management budget which addresses the quality and quantity of services required by the residents and the project;

(4) Any other criteria HUD determines are relevant to a specific project;

(b) Where it is infeasible or impracticable to secure adequate management for formerly subsidized projects through conventional bidding procedures, HUD may negotiate with qualified management where: (1) Such management meets all the criteria necessary for successful operation of the project, and (2) satisfactory terms, including reasonable cost of services, can be achieved through such negotiation.

(c) Project managers shall be required to manage projects in accordance with HUD's management objectives contained in § 290.10 and any other directives HUD may issue.

§ 290.15 Occupancy.

(a) *Priorities.* Occupancy in HUD-owned projects shall be available to persons or families who meet HUD's written tenancy standards made pursuant to paragraph (b) of this section, on a first-come, first-served basis, except that a priority will be given to eligible tenants displaced from other HUD/owned projects after receiving a Notice of Displacement. (See § 290.45)

(b) *Standards.* HUD shall establish written standards for selecting qualified tenants based on the management objectives in § 290.10 and prudent management policies. The standards for formerly subsidized projects shall include an income eligibility criteria to assure that the lower income character of the projects is maintained.

(c) *Evictions.* Evictions from HUD-owned properties shall be governed by the regulations at Part 247, Subpart B of this chapter.

(d) *Dangerous conditions.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants because of the condition of the project and emergency repairs cannot alleviate the problem with the tenants in occupancy, HUD may require the tenants to vacate the premises in accordance with paragraph (c) of this section. When this happens, HUD shall provide displacement benefits to displaced tenants as provided in § 290.47. Tenants displaced under this paragraph shall have a right to return to repaired units in the project from which they were displaced.

[44 FR 56609, Oct. 1, 1979, as amended at 49 FR 6715, Feb. 23, 1984]

§ 290.17 Rental rates during ownership by HUD.

(a) *Determining a schedule of maximum rental rates.* As soon as practicable, but no later than 30 days after it assumes management responsibility, HUD shall establish a schedule of maximum rental rates for each unit in a HUD-owned multifamily project that is comparable to the rates charged in other multifamily projects, based on unit size, location, condition, services, and amenities provided, and is conducive to attracting high occupancy without impacting adversely on the viability of other multifamily projects and other housing projects in the area. HUD shall review and update the maximum rental rate schedule periodically to maintain current comparability.

(b) *Rents in projects acquired on or after September 19, 1988.* Except as modified by this section, HUD shall set rents in a multifamily project acquired by HUD on or after *September 19, 1988,* as if the rent setting requirements that governed rents before the project was acquired still applied.

(1) To determine the appropriate rent and to obtain information that may be useful in HUD's disposition analysis, HUD shall request an income certification from each family in occupancy at the time of acquisition of a project by HUD. This certification of income shall be conducted as soon as practicable after HUD acquires the project. Certification of income is not required, however, if the family's income has been examined by the owner or by HUD not more than four months before HUD acquired the project. If a tenant does not certify income as required by this paragraph (b)(1), the tenant must pay the unit rent as determined under paragraph (a) of this section.

(2) HUD shall request an income certification from each family applying for admission to a rental housing project to determine the family's ability to pay the unit rent, eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent. This information is also used in HUD's disposition analysis.

(3) HUD shall determine rent, for a unit in a multifamily project that, at the time of acquisition by HUD, had a market-based rent, from the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(c) *Rents in projects acquired before September 19, 1988.* Each tenant (other than an eligible tenant in a formerly subsidized project) in a HUD-owned multifamily project acquired by HUD before September 19, 1988, shall be charged a rent based on the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent, if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy. Each eligible tenant

in a formerly subsidized project acquired by HUD before September 19, 1988 shall be charged the lesser of an amount equal to the tenant rent that would be payable by the eligible tenant under Part 813 of this title, or the rent established for the unit under paragraph (a) of this section.

(d) *Utility allowance.* For a tenant in a HUD owned rental housing project whose rent is based on a percentage of adjusted income, if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD shall deduct from the rent to be paid by the tenant to HUD an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment.

(e) *Notice of rent changes.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project, HUD shall provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants as to its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous locations around the project.

(f) *Disclosure and verification of Social Security Numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

Approved by the Office of Management and Budget under control number 2502–0204)

[53 FR 27160, July 19, 1988, as amended at 54 FR 39698, Sept. 27, 1989; 55 FR 11[illegible] Mar. 30, 1990]

Subpart C—Disposition Provisions

§ 290.20 Disposition objectives.

The disposition of HUD-owned multifamily housing projects shall be carried out in accordance with the objectives listed below.

(a) Reduce the inventory of HUD-owned projects in a timely manner consistent with the goals of:

(1) Preserving or increasing the number of housing units available to and affordable by lower income tenants;

(2) Maintaining the existing housing stock in decent, safe and sanitary condition; and

(3) Preserving and revitalizing urban residential neighborhoods.

(b) Consistent with meeting the above goals, to obtain a sale price based on the project's present market value and anticipated future use or condition sufficient to protect the financial interests of the government and to produce a satisfactory return to the mortgage insurance funds.

(c) To dispose of projects in a manner which is consistent with HUD approved housing and community development needs, plans and actions of local governments to the extent feasible.

(d) To dispose of all projects in a manner which minimizes the displacement of tenants.

(e) To demolish projects only as a last resort.

(f) These are national objectives and, while local circumstances may make it impossible to meet all the objectives, they should be met to the greatest extent feasible. In some cases the objectives may represent conflicting public policy goals and decisions will have to be made to balance and choose among various objectives. In these cases discretion and judgment will have to be exercised in designing a program which best meets the nation-

al goals of providing affordable housing and preserving and revitalizing neighborhoods.

§ 290.23 Initial determination.

(a) Within 45 days after HUD acquires title to a project, the Director shall make an initial determination as to whether or not the project will be recommended for sale with subsidy.

(b) If the project is formerly subsidized, the initial determination will be to recommend sale with subsidy attached to the units.

(c) If the project is formerly unsubsidized, the initial determination will be to recommend sale either:

(1) Without subsidy, or

(2) With subsidy for any eligible tenant.

§ 290.25 Determination of need for low and moderate income housing.

(a) There is a need for low and moderate income housing in the market area served by the project which is under review unless the Director finds: (1) There is sufficient decent, safe and sanitary housing available in the market area at rents the present eligible tenants can afford without exceeding 25 percent of income, and (2) such housing is not needed for other persons residing in or expected to reside in the community.

(b) Formerly subsidized projects and formerly unsubsidized projects serving as a lower income housing resource, as determined pursuant to § 290.27(c), may not be sold without a subsidy if there is a need for low and moderate income housing in the community.

§ 290.27 General determination of subsidy to be provided.

(a) A formerly subsidized project shall be allocated subsidy for the longest possible term of the subsidy contract, pursuant to 24 CFR Part 886, Subpart B or C.

(b) A formerly subsidized project shall be allocated subsidy pursuant to 24 CFR Part 886, Subpart B or C, sufficient to assist 100% of the units. Provided, however, that the Director may recommend disposition for less than 100% of the units if the Director makes a written finding that such a sale will promote a racially mixed or mixed income tenancy and the amount of subsidy provided is at least sufficient to assist all eligible tenants residing in the project.

(c) A formerly unsubsidized project shall be allocated subsidy under the following conditions:

(1) In a project which has become a lower income housing resource, evidenced either by the income levels of the present tenancy generally being at or below the eligibility criteria for subsidy, or its inability to attract higher income tenants to fill vacancies, subsidy pursuant to 24 CFR Part 886, Subpart B or C, shall be allocated to a sufficient number of units to prevent displacement of eligible tenants and to assure the financial feasibility of the project after sale.

(2) In a project which does not meet the criteria of paragraph (c)(1) of this section, Certificates of Family Participation shall be issued in accordance with regulations for the Section 8 Certificate Program (24 CFR Part 882, Subparts A and B) to any eligible Family (see § 882.209(a)(4)(ii)(B)).

(3) The Director may recommend the sale of a formerly unsubsidized project with subsidy: (i) To promote a mixed income tenancy or a racially mixed tenancy outside of central cities or (ii) to preserve that housing stock for occupancy by lower income tenants.

[44 FR 56609, Oct. 1, 1979, as amended at 49 FR 31860, Aug. 9, 1984]

§ 290.30 Disposition of vacant land.

The following procedure will be followed in disposing of all vacant land:

(a) After acquiring title to vacant land, the Director shall complete an appraisal of the fair market value of the land.

(b) After the appraisal is completed, the Director shall send a notice to Federal, State and local government agencies, including housing and renewal agencies, which may have an interest in acquiring the land. The notice shall include information on the availability of the land for purchase and request a written reply within 30 days as to whether or not the agency has any interest in acquiring the land.

(c) If none of the Federal, State or local government agencies notified above express interest in acquiring the vacant land, the Director shall advertise the land for sale by competitive bid.

§ 290.33 Initial notice and solicitation of comments.

(a) Within 60 days after HUD acquires title to a project, the Director shall issue the following notices:

(1) A notice to each tenant in the project served in accordance with § 290.33(c) which shall include:

(i) A statement that HUD has acquired title to the project, that HUD intends to sell it, and, where applicable, that it may be sold with Section 8 assistance for all eligible tenants;

(ii) An explanation of the disposition process, including a statement that tenants will receive notice of the Director's recommendation, will have access to it and will have an opportunity to submit comments to be reviewed by the Director;

(iii) Where applicable, a statement that sale of the project with Section 8 assistance will not affect the right of any tenant to continue in occupancy;

(iv) An invitation to submit proposals, comments and facts to the Director within a certain time period, not less than 30 days, to be considered by the Director in making a disposition recommendation, particularly expressions of interest in converting the project to a cooperative or other form of resident controlled ownership; and

(v) An explanation of the displacement benefits which will be available if eligible tenants are displaced by the disposition of the project.

(2) A notice to Federal, State and local government agencies, including housing and renewal agencies, which may have an interest in acquiring the project. The notice shall include information on the availability of the project for purchase and request a written reply within 30 days as to whether or not the agency has any interest in acquiring the project.

(b) All comments received from tenants, agencies and the public shall be reviewed by the Director and taken into consideration in the disposition recommendation.

(c) All notices to project tenant shall be either personally delivered sent by first class mail. In addition general notices to all tenants shall b posted in the project office and in a propriate conspicuous location around the project.

§ 290.35 Preparation of disposition analysis.

(a) As soon as possible after the notice in § 290.33 has been sent, the d rector shall prepare a disposition anal ysis to serve as the basis for the Direc tor's disposition recommendation.

(b) The disposition analysis shall in clude:

(1) A financial analysis of the project, including an analysis of oper ating expenses and an appraisal of the fair market value of the property.

(2) A physical analysis of the project, including the condition of the structure and the grounds, the need for rehabilitation or repairs and the estimated costs of such work.

(3) An analysis of the probable causes of failure of the project and the type of management and ownership expertise which may be needed to operate the project successfully.

(4) An analysis of the feasibility of conversion to resident controlled ownership including cooperative ownership. This analysis should include consideration of the financial feasibility of conversion including the ability of the present tenants to afford it, the interest and support among the present tenants for conversion, and the impact of conversion on neighborhood preservation and revitalization.

(5) A summary of comments received from the tenants, the public, the local Public Housing Agency and any other governmental agencies regarding the disposition of the project.

(6) An assessment in accordance with HUD requirements implementing the National Environmental Policy Act of 1969, as amended, the National Historic Preservation Act (Pub. L. 89-665), the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory

Council on Historic Preservation in 36 CFR Part 800, and such other statutes that may have an impact on the disposition of the project.

(7) As it affects disposition considerations for the project, an analysis of local housing needs and conditions and actions being taken to address these needs.

(8) Information on site suitability and accessibility to needed services and employment.

(9) Appropriate demographic data on income ranges and distribution of the minority population by census tract, neighborhood, jurisdiction and SMSA in which the project is located, the Section 8 Fair Market Rents for the area, the income levels of present tenants, and consideration of the impact of disposition on the racial composition of the neighborhood as well as the neighborhoods into which tenants might move after displacement.

(10) An analysis of the need for and the feasibility of combining units to create units suitable for large families.

§ 290.37 Director's disposition recommendation.

The Director shall review the disposition analysis and any other relevant information and make a disposition recommendation for the project which is consistent with the objectives set out in § 290.20.

(a) On the basis of the disposition analysis, tenant and other comments and any other relevant information, the Director shall make written recommendations on the following issues:

(1) The proposed disposition program;

(2) The appropriateness of conversion to resident controlled ownership;

(3) The appropriateness of creating units suitable for large families;

(4) The type of management and ownership expertise required to operate the project successfully in light of the causes of its failure;

(5) The proposed method of financing the recommended disposition program, including the financing of any repairs necessary to the successful operation of the project;

(b) Every disposition recommedation must include a determination of the number of tenants who will be displaced as a result of the recommended disposition and a description of the relocation assistance to be provided, including a description of how such assistance will be provided.

§ 290.40 Notice of disposition recommendation.

(a) No later than 15 days before the Director submits the disposition recommendation to the Property Disposition Committee, the Director shall deliver a notice in accordance with § 290.33(c) to tenants in the project.

(b) The notice shall state briefly the Director's proposed disposition recommendation summarizing the major facts supporting the recommendation and shall include:

(1) An invitation for written comments to be sent to the Director for 15 days from the date of the notice;

(2) A statement that the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office and for inspection at the project office;

(3) A statement that the Property Disposition Committee will be reviewing the Director's recommendation and any comments submitted and will then make a decision to accept, modify or return the Director's recommendation;

(4) A statement that no action on disposition will take place until the Committee approves a final disposition program;

(5) A statement of the eligibility requirements for displacement benefits for any tenants who might be displaced and a summary of the expenses which are reimbursable, the assistance which HUD will provide in seeking replacement housing, and the names, addresses and phone numbers of HUD-approved counseling agencies; and

(c) A separate notice of anticipated displacement shall be sent to each tenant who would be displaced if the Disposition Recommendation were approved as submitted.

(d) Reasonable requests from tenants for a waiver of the fees charged for copying under the provisions of 24 CFR 15.14 will be honored.

§ 290.41 Forwarding of disposition recommendation.

After the comment period, described above in § 290.40, the Director shall forward the disposition recommendation to the appropriate Property Disposition Committee with tenant comments, a summary of those comments and any additional information the Director considers relevant to the disposition recommendation.

§ 290.43 Demolition.

HUD may permit the demolition of units or projects as part of the disposition or management of a project, but demolition shall be recommended only as a last resort.

(a) In making a disposition recommendation, the Director may recommend a plan to demolish a project or part of a project on the basis of one or more of the following criteria:

(1) The current and projected need for the housing is not sufficient to obtain the level of occupancy required for feasible project operation.

(2) There is major structural damage or serious physical deterioration and it is not feasible to repair the project because of engineering or design problems or because of excessive cost. Repairs which cost more than 85% of replacement cost ordinarily will not be considered financially feasible.

(3) Conditions in the neighborhood surrounding the project adversely affect the quality of the project environment to the point where life, health or safety of project residents is threatened. Inaccessibility to facilities or services will not be a decisive factor, unless it can be demonstrated that such inaccessibility was the principal cause of the failure of the project.

(b) In every case, demolition may not proceed until suitable displacement arrangements pursuant to § 290.47 have been made.

(c) Whenever demolition is recommended as part of disposition, the disposition recommendation must include a specific analysis of:

(1) The extent to which the current use and the projected use of the land after demolition are consistent with local, regional and state land use and housing plans;

(2) Where there is a need in the community for low income housing as defined pursuant to § 290.25, what is being done to replace the units which are to be demolished;

(3) The probable short-term and long-term impacts of demolition on the neighborhood and the community;

(4) The availability of suitable replacement housing for the present tenants; and

(5) The estimated cost of displacement benefits as outlined in § 290.47, excluding the cost of subsidy programs for which the tenants may be eligible.

(d) Whenever demolition is recommended during HUD's ownership of the project, the Director shall prepare written documentation pursuant to paragraph (c) of this section of the facts and reasons which formed the basis for the decision to recommend demolition. The recommendation and supporting documentation shall be forwarded to the appropriate Property Disposition Committee for approval.

(e) Every demolition recommendation shall include the findings of an Environmental Assessment, and an Environmental Impact Statement (EIS) where the Environmental Assessment concludes that an EIS is necessary.

§ 290.45 Notice of displacement.

(a) Within 30 days after the final disposition program is approved under § 290.50, HUD (or a Public Housing Authority, where it is acquiring the project) shall provide each eligible tenant who will be displaced with a notice of displacement.

(b) Where HUD determines that the final disposition program will displace an eligible tenant because the project is being demolished or converted to other than residential use, that eligible tenant shall receive a notice advising the tenant that if he or she moves from the project between the effective date of the notice and a later date set by HUD (not sooner than 30 days before the anticipated date of sale or conveyance) the tenant will be entitled to displacement benefits as outlined in § 290.47. The notice should describe the reimbursement process and provide the name, address and phone

number of the HUD official(s) who will provide assistance in locating replacement housing.

§ 290.47 Displacement benefits.

(a) Tenants who are not eligible tenants pursuant to this part will not receive displacement benefits unless otherwise provided by law. Where disposition is to a state agency which will acquire a project with Federal financial assistance, as defined in § 42.2(j) of this chapter, displacement benefits will be provided in accordance with the provisions of 24 CFR Part 42.

(b) Whenever eligible tenants are displaced as a result of the disposition or repair of a project, they shall be entitled to the benefits set forth in this section. Where appropriate, these benefits may be offered by HUD in the alternative. Eligible tenants who move prior to approval of the final disposition program shall be eligible for displacement benefits if they receive a notice of anticipated displacement pursuant to § 290.40(c) and they would have been displaced by the disposition program as approved. Eligible tenants shall:

(1) Receive priority to occupy units in HUD-owned formerly subsidized projects at rental rates not to exceed 25 percent of income. Where more than one suitable unit is available for occupancy, the Director may select the unit to be offered to the tenant;

(2) Be afforded the opportunity to return to repaired units in the same project whenever possible and be reimbursed for moving expenses pursuant to paragraph (b) of this section; or

(3) Receive a priority for other Federal housing assistance under the United States Housing Act of 1937, as amended.

(c) Eligible tenants shall be given assistance in locating replacement housing and shall be reimbursed for moving expenses not to exceed an amount determined by HUD to be reasonable for the household size and circumstances of the move.

(d) If an eligible tenant declines the assistance offered pursuant to paragraph (b) of this section, such tenant shall still be eligible to receive assistance afforded under paragraph (c) of this section, and the provision of such assistance shall discharge HUD's obligation to provide displacement benefits pursuant to this part.

[44 FR 56609, Oct. 1, 1979, as amended at 51 FR 6913, February 27, 1986]

§ 290.50 Disposition program.

(a) The Property Disposition Committee will review the Director's recommendation, the disposition analysis and any other information submitted by the Director as well as all other comments received and any other information it may require, all of which shall become part of the administrative record. After its review the Committee may approve the recommendation as submitted, modify it and return it approved as modified, or return it for further work and resubmission.

(b) If the Committee approves the recommendation as submitted or as modified, it shall become the final disposition program and the notice procedure in § 290.45 shall be implemented by the Director upon written notification of the Committee action.

(c) No final disposition program which provides for repairs to be performed by the purchaser or other conditions of sale may be approved unless it provides for rescission of the sale or reconveyance of the project to HUD if the repairs, which are a requirement of the sale, are not carried out in a timely manner, or if the project is not operated in accordance with any other conditions of the sale. This remedy is in addition to any escrow of repair funds which may be required as a condition of sale or any other remedy available to HUD.

§ 290.53 Methods of disposition.

Disposition shall be through a publicly advertised competitive offering or a negotiated sale.

(a) Competitive offerings shall be by purchase proposals or by competitive bid, as recommended by the Director.

(1) A purchase proposal is a solicited submission of a plan to purchase and operate a project either without reference to price or where the price of a project is fixed by HUD in advance.

(2) When the competitive offering is by purchase proposals HUD shall

review the proposals considering, among other factors which the Director deems appropriate: the acceptability of the management and ownership plan; the probability of adequate performance under the proposal; and the feasibility of the proposal in relation to the particular needs of the project and the tenants.

(3) HUD shall notify each person and entity submitting an acceptable proposal that its proposal is acceptable and request submission of an executed Contract of Sale and Purchase to HUD at a specific time and place. That Contract shall include a proposed purchase price for the project and any other information requested by HUD. HUD shall then proceed to evaluate and award the contract in the same manner as for competitive offerings by bid, provided that in the case of a clearly superior proposal such proposal may be selected if the Director makes a written determination supporting such selection.

(4) All other competitive offerings shall be by competitive bid.

(b) In selecting qualified purchasers for formerly subsidized projects by competitive bid, purchase proposal or negotiation, HUD shall establish requirements and criteria which HUD must consider in determining whether or not a proposed purchaser is qualified to own and operate the project in a manner acceptable to HUD. HUD may establish review panels to select qualified purchasers. Regardless of which disposition method is used, in selecting a purchaser HUD shall be satisfied that sufficient levels of competency have been met with respect to:

(1) Ability to provide sound financial management;

(2) Ability to provide sound physical management;

(3) Ability to respond to the economic and social needs of the tenants and to work with resident organizations;

(4) Responsiveness of the proposed ownership plan to the needs of the tenants and the project;

(5) Aadequacy of the purchaser's organizational, staff and financial resources to implement the proposed ownership approach;

(6) Ability to satisfy all the conditions of the disposition;

(7) Any other criteria HUD determines are relevant if advance notice of such criteria is given to prospective purchasers.

(c) Negotiated Sales. (1) HUD may negotiate the sale of any project to an agency of the Federal, State or local government.

(2) HUD may negotiate the sale of a formerly subsidized multifamily housing project when HUD determines that such a sale would best meet the objectives of this part. Such negotiated sales may be recommended when:

(i) The purchaser is a nonprofit cooperative corporation formed by the present or prospective tenants for the purpose of holding title to the project;

(ii) The purchaser is a nonprofit or limited dividend entity and it is determined by HUD to be the best source of ownership in the locality capable of the successful long-term operation of the project in a way which is responsive to all the HUD requirements for operation of the project;

(iii) The project is to be converted to homeownership and individual condominium or homeownership units are to be sold; or

(iv) The purchaser is a nonprofit consumer cooperative corporation with successful experience in the operation of nonprofit housing.

(3) When an offer to purchase is received as part of a negotiated sale, it shall be evaluated to assure that it complies with all HUD requirements for the sale of the project. Particular attention shall be paid to the financial feasibility of the proposed ownership plan.

(4) When a sale is negotiated to a nonprofit cooperative corporation or a nonprofit consumer cooperative corporation, the sales price shall be computed by determining the value of the project in one of the following ways:

(i) If the project is sold to lower income tenants without a subsidy, the value shall be the amount which can be supported by debt service payments equal to the rental income to the project operated as a nonprofit cooperative with the tenants paying 25% of income for rent or the market rental rate, whichever is lower, minus pay-

ments for all operating expenses, taxes and required reserves;

(ii) If the project is sold with section 8 subsidies the value shall be determined as in paragraph (c)(4)(i) of this section except that the project rents set pursuant to section 8 shall be used to determine rental income. Where appropriate (as in a partially subsidized project), a combination of the above methods may be used to determine price;

(iii) In all other cases, the value shall be the fair market value as determined by HUD.

(iv) The prepaid expenses incurred in converting to cooperative ownership may be recovered by deferring payment on the mortgage and placing project rents into an escrow for the purpose of paying those expenses or HUD may make such other provision for payment as HUD determines are reasonable and appropriate.

(d) Previous Participation Review. All purchasers of HUD-owned projects must be approved under the Previous Participation Review and Clearance procedures in 24 CFR 200.210 et seq., except Federal, State or local government agencies.

§ 290.55 Property disposition committee.

(a) There shall be a Property Disposition Committee (PDC) with authority to approve all dispositions of HUD-owned multifamily housing projects.

(b) The PDC shall consist of the following officials or their designees:

(1) The Chairperson shall be the Assistant Secretary for Housing-Federal Housing Commissioner.

(2) The Deputy Assistant Secretary for Multifamily Housing Programs.

(3) The Director of the Office of Multifamily Housing Management and Occupancy.

(4) The Director of the Office of Multifamily Housing Development.

(5) The General Counsel.

(6) The Deputy Assistant Secretary for Public Housing and Indian Programs.

(c) The PDC may delegate its authority to approve property dispositions to PDC's convened at the Regional or Area Office level on such terms and conditions as the PDC may prescribe.

(d) The Director of the Office of Multifamily Financing and Preservation shall serve as a non-voting member of the Property Disposition Committee and shall be responsible for presenting disposition recommendations to the Committee for its decision.

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

Subparts A—D [Reserved]

Subpart E—Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

Sec.

291.1 Purpose and scope.
291.5 Definitions.
291.50 Applicant preapproval; notification of eligible properties.
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291.110 Supportive Housing Demonstration program lease-option to purchase properties.
291.120 Sale of properties for use by the homeless.
291.130 Elimination of lead-based paint hazards.
291.140 Applicability of other Federal requirements.

AUTHORITY: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 2, Housing Act of 1949 (42 U.S.C. 1441); sec. 2, Housing and Urban Development Act of 1968 (42 U.S.C. 1441a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 55 FR 1161, Jan. 11, 1990, unless otherwise noted.

§ 291.1 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to describe the basic policies and procedures that govern the disposition of HUD-acquired one- to four-family properties for use by the homeless. The intent of the regulations is to balance the needs of the homeless and the interests of the FHA insurance funds, and to work toward the National Housing Goal of "a decent home and a suitable living environment for every American family."

(b) *Property available.* HUD will make available, to applicants approved by HUD, certain HUD-acquired single

family properties for use by the homeless. Properties will be available for lease with option to puchase, for lease-option under the McKinney Act Supportive Housing Demonstration program, or for sale.

(c) *Property available for lease with option to purchase.* HUD will make available up to ten percent of its total inventory of eligible properties as of October 1, 1989. Thereafter, on October 1 of each year, the ten percent figure will be adjusted upward or downward to reflect increases or decreases in the total inventory. Property will be available for lease under the terms and conditions described in § 291.100, in accordance with the following criteria:

(1) The property is vacant;

(2) The property has been listed for sale for at least 30 days; and

(3) A sales contract has not been accepted for the property, and the property has not been committed to another program (such as Urban Homesteading).

(d) *Property available under a McKinney Act Supportive Housing Demonstration lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement, under the terms and conditions described in § 291.110 and in accordance with the criteria in paragraph (c) of this section, to Supportive Housing Demonstration program applicants for advances for acquisition under 24 CFR parts 577 and 578.

(e) *Property available for sale.* Eligible properties will be available for competitive sale or direct sale for fair market value, less a 10 percent discount, under the terms and conditions described in § 291.120.

(f) *Concentration of properties.* To the extent practicable and possible, HUD will avoid excessive concentration in a single neighborhood of properties leased or sold under this subpart.

§ 291.5 Definitions.

As used in this subpart:

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits a written expression of interest in eligible properties under this subpart. Governmental entities include those that have general governmental powers (*e.g.*, a city or county), as well as those with limited or special powers (*e.g.*, public housing agencies or state housing finance agencies).

Competitive sale means a sale through a sealed bid process in competition with other bidders where properties have been publicly advertised to all prospective purchasers for bids.

Direct sale means a sale to a selected purchaser to the exclusion of all other without resorting to advertising for bids. Such a sale is available only to approved applicants under this subpart.

Disposition means the sale, or lease with option to purchase, of eligible properties for use by the homeless.

Eligible properties means all single family properties acquired by HUD under the Mutual Mortgage Insurance Fund, the Special Risk Insurance Fund, the General Insurance Fund, or other housing programs.

Homeless means:

(a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family that has a primary nighttime residency that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Develpment.

Lessee means the applicant, approved by HUD as financially responsible, that executes a lease agreement with HUD for an eligible property.

Occupant means a homeless individual or family that occupies an eligible

property after that property has been leased to an applicant under this subpart.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(a) Have a voluntary board;

(b)(1) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(c) Practice nondiscrimination in the provision of assistance under this part in accordance with the authorities described in § 291.130(a); and

(d) Have nonprofit status as demonstrated by Internal Revenue Code section 501.c(3) approval.

Secretary means the Secretary of the Department of Housing and Urban Development.

Single family property means a property designed for use by one to four families.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive Housing Demonstration program means the transitional housing program described in 24 CFR part 577 or the permanent housing for the handicapped homeless program described in 24 CFR part 578.

Tribe means an Indian tribe, band, group or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

§ 291.50 Applicant preapproval; notification of eligible properties.

(a) *Applicant preapproval.* (1) An applicant must be preapproved by HUD before a Field Office may notify it of eligible properties, as described in paragraphs (b) and (c) of this section.

(2) For pre-approval to purchase or lease properties under this subpart, an applicant must provide to the appropriate HUD Field Office the following:

(i) Applicant data, including identity; a description of past experience relevant to providing housing or supportive services for the homeless; and, for private nonprofit organizations, information on eligibility and financial responsibility. (HUD has determined, for purposes of the requirements of this subpart, that States, metropolitan cities, urban counties, governmental entities, and tribes are financially responsible.)

(ii) A description of the particular homeless population expected to occupy the property, supportive services required by that group, and how the supportive services will be provided.

(iii) An applicant that desires to sublease property during the period of time its application for Supportive Housing assistance is pending, as described in § 291.110(c)(2), must also provide documentation of its ability to meet the obligations of § 291.100(d).

(b) *Notification of eligible properties available for lease with option to purchase.* (1) Applicants, pre-approved by HUD as described in paragraph (a) of this section, interested in leasing properties under § 291.100 or § 291.110 must designate geographical areas of interest to appropriate HUD Field Offices. Upon request, Field Offices will notify interested applicants in writing when eligible properties meeting the criteria in § 291.1(c) become available in the area designated by the applicant. Field Offices will coordinate the dissemination of the information to ensure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be

leased to applicants on a first come-first served basis.

(2) After an applicant has been notified of eligible properties available in the geographical area, specific properties selected by the applicant will be held off the market for a 10-day consideration and inspection period. The 10-day period will begin to run upon notification by the applicant to the Field Office. Only those properties in which the applicant has expressed an interest will be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale.

(c) *Notification of eligible properties available for direct sale.* (1) Applicants, pre-approved by HUD as described in paragraph (a) of this section, interested in purchasing properties by direct sale under § 291.120 must designate geographical areas of interest to appropriate HUD Field Offices. Upon request, and before properties are listed for sale, Field Offices will notify interested applicants in writing of eligible properties available in the area designated by the applicant. HUD Field Offices will coordinate the dissemination of the information to insure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be sold to applicants on a first come-first served basis.

(2) After an applicant has been notified of eligible properties available in the geographical area, properties will remain available for a 10-day consideration and inspection period. The 10-day period will begin to run upon receipt of the list of eligible properties by the applicant. In the case of notifications by mail, the 10-day period will begin to run five days from the date HUD mails the notification to the applicant. If no written expression of interest has been received by the HUD Field Office by the end of the 10-day consideration and inspection period, the Field Office will offer the properties for sale to the general public.

(Approved by the Office of Management and Budget under control number 2502-0412)

[55 FR 1161, Jan. 11, 1990, as amended at 55 FR 4837, Feb. 12, 1990]

§ 291.100 Lease with option to purchase properties for use by the homeless.

(a) *Certification.* Eligible properties meeting the criteria in § 291.1(c) are available for lease to applicants, approved by HUD, that certify that the property will be utilized only for the purpose of providing housing for the homeless during the lease term and that the intended use of the property will be consistent with all local laws and regulations. The lease agreement will be in a form prescribed by the Secretary.

(b) *Term of lease.* (1) A lease of an eligible property may be negotiated for such time as the lessee requires, not to exceed one year. Leases are renewable, at the option of the lessee, at the end of the first lease term for up to two additional one-year terms, so long as the property is being used for the homeless.

(2) A property will not be leased to a lessee for a period longer than three years. At the end of the three-year period, if the lessee has not exercised the option to purchase, HUD will notify the lessee to vacate the property and, if necessary, will take appropriate action under the eviction laws of the jurisdiction in which the property is located. All property returned to HUD at the end of the lease period will be placed on the market for sale to the general public.

(c) *Rent.* (1) The lessee must pay HUD a nominal rent of $1 for the term of the lease.

(2) A lessee may charge rent to an occupant at a rate appropriate to the financial means of the occupant. Such rent, however, may not be in an amount that exceeds the lessee's costs of operating the property.

(d) *Property operating costs and insurance.* (1) Lessees are responsible for the payment of all utilities, taxes, repair costs (including treatment for lead-based paint, if necessary), management costs, and any other costs associated with the operation of leased properties.

(2) Lessees must obtain general liability insurance on each leased property in an amount determined by HUD and specified in the lease agreement. Lessees are not required to carry hazard insurance on the properties.

(3) If the lease is terminated before the end of the lease term, taxes and utilities due on the property will be prorated between HUD and the lessee.

(e) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the fair market value established at the time of the initiation of the lease, less 10 percent. Any repairs to or rehabilitation of a property done by a lessee during the lease term will not be reflected in the purchase price. If conditions outside the control of the lessee cause the fair market value of the property to decrease after the initiation of the lease, the property will be offered at the fair market value at the time of purchase, less 10 percent.

(2) Sales of leased properties will be on an as-is, all-cash basis. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. The purchaser must pay all other closing costs.

§ 291.110 Supportive Housing Demonstration program lease-option to purchase properties.

(a) *Lease-option for Supportive Housing Demonstration program applicants.* Eligible properties meeting the criteria in § 291.1(c) will be available under a lease-option agreement to applicants for acquisition advances under the Supportive Housing Demonstration program, as described in 24 CFR part 577 or 578. An applicant may enter into a lease-option agreement with HUD for up to six months while its application for Supportive Housing assistance is being reviewed by HUD.

(2) Except as provided in paragraph (c) of this section, the applicant may not sublease the property during the lease term. The applicant is responsible for the payment of all taxes and utilities for the property and for the security and maintenance of the property, including lawns and grounds, during the lease term.

(3) The applicant may purchase the property for fair market value, less 10 percent, at any time during the lease period in accordance with the terms of § 291.100(e).

(b) *Termination of the lease-option agreement.* If the applicant is not approved for assistance under the Supportive Housing Demonstration program, or for any other reason desires to terminate the lease-option agreement during the lease term, the applicant must promptly notify the Field Office that it is releasing the property back to HUD. All taxes and utilities will be prorated as of the termination date of the lease-option agreement, and the property must be returned to HUD in the same condition in which it was conveyed to the applicant. The lease-option agreement terminates automatically at the end of the lease term if the applicant fails to exercise its right to purchase and no extension has been granted.

(c) *Converting lease-option to lease with option to purchase; occupancy during lease-term.* (1) A lessee whose application for Supportive Housing assistance is not approved may convert the lease-option agreement to a lease with option to purchase under the terms and conditions of § 291.100, subject to HUD approval.

(2) A lessee may be allowed to sublease the property to the homeless under terms and conditions of § 291.100 (b) and (c) while its application for Supportive Housing assistance is pending if the lessee demonstrates to HUD's satisfaction the ability to meet the obligations described in § 291.100(d). In the event the application for Supportive Housing assistance is not approved, the lessee must execute a lease with option to purchase agreement under the terms and conditions of § 291.100 in order to continue to sublease.

§ 291.120 Sale of properties for use by the homeless.

(a) *Sale of properties.* Eligible properties are available for applicants to purchase by either direct sale or competitive sale for use by the homeless.

(b) *Direct sales.* For direct sales, the purchase price for the property will be

at the fair market value established for the property in the approved disposition program, less 10 percent.

(c) *Competitive sales.* As an alternative to direct sales, an applicant, approved by HUD, may submit a competitive bid on any property listed for sale to the general public, following normal HUD procedures for the competitive bid process. If the applicant's competitive bid is the winning bid at the bid opening, the HUD Field Office will accept the bid, and will reduce the net amount due HUD by 10 percent.

(d) *Terms of sale.* (1) To purchase property by direct or competitive sale, an applicant must execute Form HUD–9548, Sales Contract. The applicant will be given 30 to 60 days (depending on the practice of the local HUD Field Office) from the date of acceptance of the contract by the Field Office to close the sale. Earnest money deposits and closing extension fees may be collected by the Field Office, if necessary, to assure compliance with the sales contract.

(2) Sales will be on an as-is, all-cash basis. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. The purchaser must pay all other closing costs.

(Approved by the Office of Management and Budget under control number 2502–0306)

§ 291.130 Elimination of lead-based paint hazards.

(a) *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraphs (c) and (d) of this section) apply to the lease or sale of property constructed prior to 1978 under this subpart. This section establishes procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to properties that may be occupied by children under seven years of age. This section is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to this program, the requirements prescribed in subpart C of 24 CFR part 35.

(b) *Definitions.* The following definitions apply to this section:

Applicable surfaces means all intact and non-intact painted interior and exterior surfaces of a residential structure.

Chewable surfaces means all chewable, protruding painted surfaces up to five feet from the floor or ground which are readily accessible to children under seven years of age; *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm2.

(c) *Inspection and treatment of defective paint surfaces.* HUD will inspect the property for defective paint surfaces before offering the property for sale or lease. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed by HUD before the sale or lease of the property.

(d) *Testing and treatment of chewable surfaces.* (1) If the lessee or purchaser knows or has reason to expect that the property will be occupied by homeless families with children under the age of seven years, the lessee or purchaser must cause the unit to be tested for lead-based paint on chewable surfaces before initial occupancy. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray florescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, the lessee or purchaser must cause the entire interior or exterior chewable surface to be treated. Treatment must consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). If the lessee or purchaser certifies to HUD that the property will not be occupied by homeless families with children

under the age of seven years, no testing or treatment of chewable surfaces will be required.

(2) If a lessee or purchaser has reason to believe that a property contains lead-based paint on chewable surfaces, it may, at its option, dispense with the testing procedure and proceed directly to treatment.

(3) The lessee or purchaser may not allow the property to be occupied until proof of testing or treatment, if necessary, has been submitted to HUD.

(The information collection requirements contained in § 291.130(d) were approved by the Office of Management and Budget under control number 2502-0412)

[55 FR 1161, Jan. 11, 1990, as amended at 55 FR 4837, Feb. 12, 1990]

§ 291.140 Applicability of other Federal requirements.

Each lessee or purchaser of property under this subpart must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601-3620) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(2) Lessees or purchasers that intend to serve designated populations of the homeless must comply, within the designated population, with the requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and handicap.

(3) If the procedures that the lessee or purchaser intends to use to make known the availability of housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the availability of the housing.

(b) *Conflicts of interest.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the lessee or purchaser of property under this subpart and who exercises or has exercised any functions or responsibilities with respect to the lease or purchase of the property, or who is in a position to participate in a decisionmaking process or gain inside information with regard to the lease or purchase of the property, may obtain a personal or financial interest or benefit from the lease or purchase of the property, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(c) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status.

(d) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order 12372 and the implementing regulations at 24 CFR part 52 are not applicable to applications under this subpart.

(e) *Drug- and alcohol-free housing.* Lessees and purchasers are required to administer, in good faith, a policy designed to ensure that the property is free from the illegal use, possession, or distribution of drugs or alcohol.

CHAPTER III—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER A—INTRODUCTION

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SUBCHAPTER A—INTRODUCTION

PART 300—GENERAL

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300.3 Description.
300.5 Creation and status.
300.7 Area of operations.
300.9 Offices.
300.11 Power of attorney.
300.13 Exceptions.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a, unless otherwise noted.

SOURCE: 36 FR 24695, Dec. 22, 1971, unless otherwise noted.

§ 300.1 Scope of chapter.

This chapter consists of general information and does not purport to set forth all of the procedures and requirements that apply to the operations of the Association. Complete specific information as to any aspect of such operations may be obtained from the regional offices listed in § 300.9.

§ 300.3 Description.

The Government National Mortgage Association (hereafter in this chapter called the Association) purchases, services, and sells mortgages insured or guaranteed by the Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA), furnishes fiduciary services to itself and other departments and agencies of the Government, and guarantees privately issued securities backed by trusts or pools of mortgages or loans which are insured or guaranteed by FHA and VA and certain loans insured by the Farmers Home Administration.

[36 FR 24695, Dec. 22, 1971, as amended at 54 FR 39525, Sept. 27, 1989]

§ 300.5 Creation and status.

The Association is a Government corporation in the Department of Housing and Urban Development. The origin of the Association is in the creation on February 10, 1938, under title III of the National Housing Act, of the National Mortgage Association of Washington. On April 11, 1938, its name was changed to Federal National Mortgage Association. Effective November 1, 1954, it was rechartered by the Congress as a mixed-ownership corporation. Effective September 1, 1968, it was partitioned by the Congress into two corporations, one of which is the Association. The operations of the Association are conducted under its statutory charter contained in title III of the National Housing Act, 12 U.S.C. 1716 et seq.

§ 300.7 Area of operations.

The Association is authorized to conduct its business in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 300.9 Offices.

The Association directs its operations from its office located at 451 Seventh Street SW., Washington, D.C. 20414. It has made provisions for the carrying on of such operations through the Federal National Mortgage Association (FNMA). The regional offices of FNMA are listed below:

Atlanta, Ga. 30303, 34 Peachtree Street NE.: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Chicago, Ill. 60603, 1112 Commonwealth-Edison Building, 72 West Adams Street: Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

Dallas, Tex. 75201, 411 North Akard Street: Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, Texas.

Los Angeles, Calif. 90005, 3540 Wilshire Boulevard: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming.

Philadelphia, Pa. 19103, 5 Penn Center Plaza: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, and West Virginia.

§ 300.11 Power of attorney.

(a) The Association does hereby make, constitute, and appoint each of the persons named by Notice pub-

lished in the FEDERAL REGISTER, its true and lawful attorney-in-fact, for the Association and in its name and stead, in accordance with this chapter and the Association's guidebooks, contracts, and oral or written instructions.

(1) To purchase or contract to purchase any note, bond, or other evidence of indebtedness and any accompanying real estate mortgage, deed of trust, security deed, chattel mortgage, or collateral or security of whatsoever kind or nature, to modify or consent to the modification of any such contract, and to act or authorize action to enforce any such contract;

(2) To endorse, assign, sell, exchange, amend, modify, extend, release, cancel, or renew any note, bond, check, or other evidence of indebtedness now or hereafter held by the Association, and to release from liability any maker, obligor, or guarantor on any such note, bond, check, or other evidence of indebtedness;

(3) To satisfy, discharge, release, amend, assign, modify, extend, renew, subordinate, foreclose, or liquidate in any legal manner, in whole or in part, any chattel mortgage, real estate mortgage, deed of trust, security deed, or collateral or security of whatsoever kind or nature, securing any note, bond, check, or other evidence of indebtedness now or hereafter held by the Association, and to exercise any right or authority which the Association has or may have pursuant to the terms of any such security instrument or evidence of indebtedness, including any power of appointment contained therein;

(4) To assign, convey, sell, lease, or sublease and to contract for the assignment, conveyance, sale, lease, or sublease of any real estate, chattel, security, or property of any sort or nature, or any interest therein, now held or hereafter acquired by the Association;

(5) To discharge, satisfy, release, waive, enforce, compromise, subordinate, or assign, in whole or in part, any judgment now or hereafter entered in favor of, or assigned to, the Association;

(6) To assign, surrender, release, or modify, or consent to the assignment, surrender, release, or modification of, any policy of insurance, or any right arising therefrom, of which the Association now is or hereafter shall become the assignee, beneficiary, or the insured, or in which the Association now has or hereafter may have any interest of any kind or nature; and to execute proof of loss, proof of death, statement of claimant, and any other instrument in connection with any such policy of insurance and any right arising therefrom;

(7) To execute, acknowledge, deliver, file for record, and record any such instrument, and to perform such other act or acts as may be necessary and proper to effectuate the foregoing; and

(8) To designate and appoint in behalf of the Association such other attorneys-in-fact for the Association as he may deem appropriate for the purpose of releasing or satisfying of record any specific mortgage, deed of trust, security deed, or other security instrument now or hereafter held by the Association.

(b) The Association does further grant unto each of such attorneys-in-fact, and any other attorney-in-fact designated and appointed pursuant to this section, full power and authority to do and perform all and every act and thing requisite, necessary, and proper to carry into effect the power or powers granted by or under this section as fully, to all intents and purposes, as the Association might or could do, and hereby does ratify and confirm all that each of such attorneys-in-fact, and any other attorney-in-fact designated and appointed pursuant to this section, shall lawfully do or cause to be done by virtue of the power or powers granted by or under this section.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 309(d) of the National Housing Act, 12 U.S.C. 1723a(d))

[36 FR 24695, Dec. 22, 1971]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 300.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 300.13 Exceptions.

In the conduct of its affairs, in individual cases or classes of cases, the Association reserves the right, consistent with law, without prior notice and at any time, to alter or waive any of the requirements contained in this chapter or elsewhere or to impose other and additional requirements; it further reserves the right, without prior notice and at any time, to amend or rescind any or all of the material set forth herein.

PART 310—BYLAWS OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

AUTHORITY: Sec. 308, 82 Stat. 539; 12 U.S.C. 1723.

§ 310.1 Bylaws of the Association.

The bylaws of the Government National Mortgage Association, duly adopted by the Secretary of Housing and Urban Development pursuant to section 308 of the National Housing Act (12 U.S.C. 1723), are set forth in the following appendix.

APPENDIX

ARTICLE 1—

GENERAL PROVISIONS

SECTION 1.01. *Name.* The name of the corporation is Government National Mortgage Association (the "Association").

SEC. 1.02. *Powers and Duties.* There are hereby delegated to the Association, except as otherwise provided in these Bylaws, all the powers and duties of the Association which are by law vested in the Secretary of Housing and Urban Development (the "Secretary").

SEC. 1.03. *Principal Office and Other Offices.* The principal office of the Association shall be in the District of Columbia. Other offices of the Association shall be in such other places as may be deemed by the Secretary to be necessary or appropriate.

SEC. 1.04. *Seal.* The seal of the Association shall be of such design as shall be approved from time to time by the Secretary, and may be affixed to any document by impression, by printing, by rubber stamp, or otherwise.

SEC. 1.05. *Fiscal Year.* The fiscal year of the Association shall end on the thirtieth day of June of each year.

ARTICLE 2—

GENERAL POLICIES

SEC. 2.01 *General Policy.* The Secretary of Housing and Urban Development shall determine the general policies of the Association.

SEC. 2.02 *Mortgage Disposition Board.* There is established a Mortgage Disposition Board which shall consist of three members. The President of the Association shall serve as Chairman of the Board. The Secretary of Housing and Urban Development shall appoint the two remaining members of the Board, who shall serve at the pleasure of the Secretary. The Board, from time to time, shall establish the maximum in original principal amount of mortgages that can be the subject of a sale by the Association without Board approval and may also consider such other matters as may be brought before it by the Chairman. With respect to any sale exceeding such maximum, the Board, in a meeting called by the Chairman at which at least two members are present, shall establish the minimum price to be received by the Association and approve the type and timing of the sale. If unanimous approval is not provided by the Board, the proposed sale must be approved by the Secretary.

ARTICLE 3—

THE OFFICERS

SEC. 3.01. *Number.* The Executive Officers of the Association shall consist of a President, one or more Vice Presidents, a Treasurer, a General Counsel, a Secretary of the Association, and a Controller, and there shall be such other officers, assistant officers, agents, attorneys, and employees as may be deemed necessary by the Secretary of Housing and Urban Development.

SEC. 3.02. *General Authority and Duties.* All officers, agents, attorneys, and employees of the Association shall have such authority and perform such duties in the management and conduct of the business of the Association as may be provided in these Bylaws, as may be established by the Secretary not inconsistent with these Bylaws, or as may be delegated to them in a manner not inconsistent with these Bylaws. The President, each Vice President, and each Assistant Vice President are severally expressly empowered in the name of the Association to sign all contracts and other documents, instruments, and writings which call for execution by the Association in the conduct of its business and affairs, and to encumber, mortgage, pledge, convey, or otherwise alien any property which the Association may own or in which it may have an estate, right, title, or interest.

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SEC. 3.03. *Election, Tenure, and Qualifications.* The Executive Officers named in section 3.01 shall be appointed by the Secretary and shall serve without term. The officers, agents, attorneys, and employees of the Association, other than Executive Officers, shall be appointed by the President or by any other Executive Officer to whom the President shall have delegated the authority.

SEC. 3.04. *Removal.* Any officer, agent, attorney, or employee may be removed by the Secretary. Other than an Executive Officer, any officer, agent, attorney, or employee may also be removed by the President or by any other Executive Officer having authority to choose or appoint the officer, agent, attorney, or employee. Any such removal shall not be effected in a manner inconsistent with applicable law, these Bylaws, and the corporate charter.

SEC. 3.05. *The President.* The President shall be the chief executive officer and shall have active executive management of the operations of the Association. Except as may be otherwise provided by law, the corporate charter, these Bylaws, or the Secretary, the President of the Association shall have plenary power and authority to perform all duties ordinarily incident to the office of President and such other duties as may be assigned to him from time to time by the Secretary. The President may prescribe, amend, and rescind regulations (for publication in the FEDERAL REGISTER or otherwise), requirements and procedures governing the manner in which the general business of the Association will be conducted and, in the exercise of discretion, shall have power to provide for individual exceptions thereto. The President shall designate the sequence in which other officers, during the absence or inability to act of the President or during a vacancy in the office of President, shall perform the duties and exercise the power and authority of the President; otherwise such designation shall be made by the Secretary.

SEC. 3.06. *The Vice Presidents.* Each Vice President shall have such powers and perform such duties as the Secretary may prescribe or as the President may delegate to him.

SEC. 3.07. *The Treasurer.* The Treasurer shall be the financial officer, and, in general, shall perform all the duties ordinarily incident to the office of Treasurer and such other duties as may be assigned to him by the Secretary or by the President. The Treasurer may be required to furnish bond in such amount as shall be determined by the Secretary or the President of the Association and the premium for any such bond shall be paid by the Association.

SEC. 3.08. *The General Counsel.* The General Counsel shall be the principal consulting officer of the Association in all matters of legal significance or import; shall be responsible for and direct all counsel, attorneys, employees, and agents in the performance of all legal duties and services for and on behalf of the Association; shall perform such other duties and have such other powers as are ordinarily incident to the office of General Counsel; and shall perform such other duties as, from time to time, may be assigned to him by the Secretary or by the President of the Association.

SEC. 3.09. *The Secretary of the Association.* The Secretary of the Association shall be the custodian of records and of the seal of the Association; and, in general, shall perform all the duties ordinarily incident to the office of corporate Secretary and such other duties as may be assigned to him by the Secretary of Housing and Urban Development or by the President of the Association. The Secretary of the Association and any Assistant Secretary of the Association are expressly empowered to attest all signatures and to affix the seal to all documents the execution of which on behalf of the Association under its seal is duly authorized.

SEC. 3.10. *The Controller.* The Controller shall keep or cause to be kept full and accurate accounts of all assets, liabilities, commitments, receipts, disbursements, and other financial transactions of the Association; shall certify vouchers for payment by the Treasurer or his designee, and shall designate, with the written concurrence of the President, such other officers, agents, attorneys, and employees, severally, who may so certify; and, in general, shall perform such other duties as from time to time may be assigned to him by the Secretary or by the President of the Association.

SEC. 3.11. *Assistant Officers.* Each assistant to an officer, including but not limited to any Assistant Vice President, any Assistant Treasurer, any Assistant General Counsel, and any Assistant Secretary of the Association, and any other such assistant to any officer, shall perform such duties as are, from time to time, delegated to him, in writing, by the officer to whom he is an assistant, by the Presidnet, or by the Secretary. At the request of the officer to whom he is an assistant, an assistant officer may temporarily perform the duties of that officer, and when so acting shall have the powers of and be subject to the restrictions imposed upon such officer.

ARTICLE 4—

AMENDMENTS

The power to alter, amend, or repeal these Bylaws, and to adopt new Bylaws is retained by the Secretary of Housing and Urban Development.

[36 FR 24697, Dec. 22, 1971, as amended at 41 FR 21770, May 28, 1976]

SUBCHAPTER B—SPECIAL ASSISTANCE FUNCTIONS

PART 320—DESCRIPTION

Sec.

320.1 Authority.
320.3 Mortgages eligible for purchase.
320.5 Fees or charges.
320.7 Below-market interest rate mortgages.
320.9 Financing of special assistance functions.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a, unless otherwise noted.

SOURCE: 36 FR 24697, Dec. 22, 1971, unless otherwise noted.

§ 320.1 Authority.

The Special Assistance Functions of the Association are authorized by section 305 of the National Housing Act, to provide financing for selected types of mortgages that qualify under special housing programs. The Association also provides assistance, from time to time, through the purchase of home mortgages generally as a means of retarding or stopping a decline in mortgage lending and home building activities which threatens materially the stability of a high level National economy.

§ 320.3 Mortgages eligible for purchase.

Operations under the Special Assistance Functions are confined, so far as is practicable, to mortgages which are deemed by the Association to be of such quality as to meet, substantially and generally, the purchase standards imposed by private institutional mortgage investors, but which, at the time the mortgages are offered for purchase, are not necessarily readily acceptable to such investors. When and as authorized by the President of the United States, or by the Congress, the Association announces the inauguration of Special Assistance Programs, specifying the types of mortgages that will be purchased, the prices to be paid therefor, and any special acceptability requirements relating to such Programs.

§ 320.5 Fees or charges.

Fees or charges for the Association's services under the Special Assistance Functions are established with the objective that all related costs and expenses will be within the income of the Association derived from the operations and that such operations will be fully self-supporting. In connection with all purchases of mortgages, unless otherwise specified as to a particular Special Assistance Program, the Seller is required to pay a Purchase and Marketing fee. For the issuance of commitments to purchase mortgages in the future, a Commitment fee is also charged.

§ 320.7 Below-market interest rate mortgages.

The Association is expressly authorized to purchase below-market interest rate mortgages insured under sections 221(d)(3) and 221(h) of the National Housing Act. As to these mortgages, the Association's operations are not required to be self-supporting.

§ 320.9 Financing of special assistance functions.

Funds required for operations of the Special Assistance Functions are obtained primarily by borrowings from the Secretary of the Treasury. Additional sources of funds are portfolio liquidations, sales of certificates of beneficial interests or participations in mortgages, and net earnings. All of the benefits and burdens incident to the administration of the Special Assistance Functions inure solely to the Secretary of the Treasury.

PART 330—ELIGIBLE SELLERS OF MORTGAGES

Sec.

330.1 General.
330.3 Servicing facilities.
330.5 VA-guaranteed mortgages.
330.7 FHA-insured mortgages.
330.9 Governmental instrumentality.
330.11 Termination.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

SOURCE: 36 FR 24698, Dec. 22, 1971, unless otherwise noted.

§ 330.1 General.

Designation of an eligible Seller to sell mortgages to the Association under its Special Assistance Functions is consummated by the execution of a Selling Agreement.

§ 330.3 Servicing facilities.

The Selling Agreement requires the Seller, with respect to each home mortgage offered or submitted for purchase, either (a) to be qualified as a Servicer by the execution of a Servicing Agreement and agree to service the mortgage or (b) to proffer facilities satisfactory to the Association for servicing the mortgage. Sellers are not required to furnish servicing facilities in connection with the purchases by the Association of multifamily mortgages.

§ 330.5 VA-guaranteed mortgages.

In order to be eligible to sell a VA-guaranteed mortgage to the Association, a seller must be acceptable to the Association and also must come within one of the following three classifications:

(a) Any lender that is classified by VA as a supervised lender under Chapter 37 of title 38, United States Code, including any National bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State, including the District of Columbia;

(b) Any lender that is an FHA-approved mortgagee, as defined in § 330.7; or

(c) Any other lender, if such lender has a net worth of not less than $100,000 in assets acceptable to the Association.

§ 330.7 FHA-insured mortgages.

In order to be eligible to sell an FHA-insured mortgage to the Association, a Seller must be acceptable to the Association and must be an FHA-approved mortgagee, which term does not include a mortgagee that has been approved on the basis of being a duly authorized loan correspondent of an approved mortgagee qualified with FHA to originate loans under the National Housing Act.

§ 330.9 Governmental instrumentality.

Except with respect to mortgages insured under sections 221(d)(3) or 221(h) of the National Housing Act, a State territorial, or municipal instrumentality cannot be become an approved Seller.

§ 330.11 Termination.

The Association may, upon notice as stipulated in the Selling Agreement, terminate the Agreement in whole or in part in accordance with the terms therein provided.

PART 340—PURCHASE REQUIREMENTS

Sec.

340.1 Scope of part.
340.3 General requirements.
340.5 Ownership.
340.7 Original mortgagee.
340.9 Mortgage interest rate.
340.11 Offering periods.
340.13 Maximum purchase price.
340.15 Statutory maximum mortgage amounts.
340.17 Advances by seller.
340.19 Credit.
340.21 Property.
340.23 Occupancy.
340.25 Mortgage lien.
340.27 Title evidence.
340.29 Hazard insurance.
340.31 Eligibility of VA mortgages.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a, unless otherwise noted.

SOURCE: 36 FR 24698, Dec. 22, 1971, unless otherwise noted.

§ 340.1 Scope of part.

This part describes the general requirements and procedures governing the purchase by the Association of mortgages under the Special Assistance Functions. Other requirements and procedures are set forth in greater detail in the Sellers' Guide of the Association.

§ 340.3 General requirements.

As a condition precedent to the offering of mortgages to the Association

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for purchase, the Seller and the Association must have executed a Selling Agreement pursuant to Part 330 of this chapter. Any mortgage offered or submitted to the Association must meet the conditions contained in such Agreement. Each mortgage must meet all the requirements of the law, rules, and regulations that are applicable, and must also conform to any special acceptability requirements prescribed by the Association and to the pertinent requirements of this part.

§ 340.5 Ownership.

On the date of the Seller's offer to enter into an immediate purchase contract with the Association, the Seller must be the owner of the mortgage.

§ 340.7 Original mortgagee.

The Seller must be the original mortgagee, and must not have made any prior sale of the mortgage offered to the Association.

§ 340.9 Mortgage interest rate.

Except for those below market interest rate mortgages insured under sections 221(d)(3) and 221(h), each mortgage must bear interest at the highest rate permitted by FHA or VA Regulations for that type of mortgage at the time of issuance of the FHA insurance commitment or the VA Certificate of Reasonable Value.

§ 340.11 Offering periods.

(a) *Immediate purchase contract.* Mortgages may not be offered to the Association for immediate purchase prior to the date of the related FHA insurance commitment or VA Certificate of Reasonable Value, nor prior to the date of final disbursement of the loan proceeds; nor may they be offered later than 4 months after the date of the insurance or guaranty thereof.

(b) *Commitment contract.* An offer of a commitment contract may not be delivered to the Association prior to the issuance of the FHA insurance commitment or the VA Certificate of Reasonable Value. Subject to specific contractual treatment otherwise, an offer of a commitment contract covering a multifamily housing mortgage may not be delivered to the Association subsequent to the commencement of construction or rehabilitation.

§ 340.13 Maximum purchase price.

The Association may not purchase any mortgage at a price in excess of par.

§ 340.15 Statutory maximum mortgage amounts.

(a) Generally, the original principal obligation of mortgages purchased under the Special Assistance Functions must not exceed $55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or $60,000 in the case of a two- or three-family residence; or $68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units $38,000 per dwelling unit for that part of the property attributable to dwelling use. These limits do not apply to mortgages covering property located in Alaska, Guam, or Hawaii; to mortgages insured under section 220 or title VIII of the National Housing Act; to mortgages insured under section 213 of such Act and covering property located in urban renewal areas; to mortgages insured under title X of such Act with respect to new communities approved under section 1004 thereof, or, in certain circumstances of local tax abatement, to below-market interest rate mortgages insured under section 221(d)(3) or section 236 of such Act.

(b) Pursuant to clause (3) of the proviso in section 302(b)(1) of the National Housing Act, 12 U.S.C. 1717(b)(1), the $38,000 maximum set forth in paragraph (a) of this section is hereby raised to $45,000 in all geographical areas generally in which the Association does business.

(c) The amounts set forth in this section are maximums allowed by statute and may be reduced by issuances and particular contracts of the Association.

(Sec. 309(a), National Housing Act, (12 U.S.C. 1723a(d)), sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d))

[39 FR 34662, Sept. 27, 1974, as amended at 43 FR 60444, Dec. 28, 1978]

§ 340.17 Advances by seller.

On the date of submission to the Association, each mortgage must be current with respect to matured installments of principal, interest, and deposits. The Seller, within the immediately preceding 3 months must not have advanced funds, nor have induced or solicited any advances of funds by another, directly or indirectly, for the payment of any amount required by the note or mortgage, except for interest accruing from the date of the note or the date of disbursement of the loan proceeds, whichever is later, to the day which precedes by 1 month the due date of the first full installment of principal and interest.

§ 340.19 Credit.

With respect to each mortgage, there should not be any circumstances of, or conditions affecting, the mortgagor, the present owner, or the affairs of either, that would cause the mortgage to become delinquent.

§ 340.21 Property.

With respect to each mortgage, there should not be any circumstances of, or conditions affecting, the mortgaged premises that would adversely affect the value or marketability of the mortgage or that would cause private investors to regard the mortgage as unacceptable for prudent investment.

§ 340.23 Occupancy.

Subject to specific contractual treatment otherwise, the property securing a home mortgage must be occupied at the time the mortgage is submitted to the Association for purchase. The property securing a multifamily housing mortgage must, at the time the mortgage is submitted to the Association for purchase be occupied to the extent that the income therefrom will cover all property expenses, carrying charges, and payments required by the mortgage.

§ 340.25 Mortgage lien.

Except in the case of certain FHA-insured home improvement loans, each mortgage must be a first and paramount lien on the security of real property, and on the related personal property if any is required to secure the loan, subject only to liens for taxes not due and payable, acceptable special assessments not in arrears, and conditions, restrictions, and encumberances deemed by the Association not to be material.

§ 340.27 Title evidence.

With respect to each mortgage, the title evidence to be delivered by the Seller must meet requirements prescribed by law or the applicable FHA or VA Regulations, and must be in such form and substance as to meet the Association's title evidence requirements.

§ 340.29 Hazard insurance.

Property securing each mortgage must be covered by kinds and amounts of hazard insurance that meet all of the hazard insurance requirements of the Association.

§ 340.31 Eligibility of VA mortgages.

To be eligible for purchase by the Association, a VA-guaranteed mortgage must in all cases meet current requirements set forth in the Sellers Guide.

PART 350—SERVICING AND SALES OF MORTGAGES

Sec.

350.1 Servicing requirements.
350.3 Servicers' compensation.
350.5 Sales.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

SOURCE: 36 FR 24699, Dec. 22, 1971, unless otherwise noted.

§ 350.1 Servicing requirements.

A seller may not service mortgages of the Association unless it has qualified as an eligible Servicer and has executed a Servicing Agreement. The Servicer must establish that it has an office with servicing facilities satisfactory to the Association located within approximately 100 miles of the mortgaged property. When the mortgage is submitted for purchase, the Servicer (whether the Seller, or another Servicer that the Seller has previously as-

certained is satisfactory to the Association) must have consented to service the mortgage, and must have executed documentary evidence of such consent. This requirement does not apply to multifamily housing mortgages.

§ 350.3 Servicers' compensation.

The compensation of Servicers is at a contractual rate or rates, as agreed to by the Association and the Servicers.

§ 350.5 Sales.

Mortgages owned by the Association are available for sale to qualified investors. Information concerning possible sales can be obtained from the regional offices listed in § 300.9 of this chapter.

SUBCHAPTER C—MANAGEMENT AND LIQUIDATING FUNCTIONS

PART 360—DESCRIPTION

Sec.
360.1 General.
360.3 Financing.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 360.1 General.

Section 306 of the National Housing Act authorizes the Association to manage and liquidate a portfolio of mortgages acquired prior to, and pursuant to contracts entered into prior to, November 1, 1954, and certain other mortgages, loans, and other obligations acquired and to be acquired subsequently from other Government agencies, in an orderly manner, with a minimum of adverse effect upon the home mortgage market and minimum loss to the Federal Government. Under the Management and Liquidating Functions, the Association also provides fiduciary services to itself and other Departments and agencies of the Federal Government, and guarantees securities issued by private institutions against pools of federally underwritten mortgages and loans.

[36 FR 24699, Dec. 22, 1971]

§ 360.3 Financing.

Funds required for the Management and Liquidating Functions are obtained principally through borrowings from the Secretary of the Treasury. Additional sources of funds are liquidations of the portfolio, sales of certificates of beneficial interests or participations in mortgages, net earnings, and appropriations. The Association is also expressly authorized to sell its obligations to private investors. The aggregate amount of such obligations issued to private investors, the proceeds of which are paid to the Secretary of the Treasury in reduction of the Association's related indebtedness, may not exceed the Association's ownership under such functions, free from any liens or encumbrances, of cash, mortgages, and other approved securities. Such obligations are not guaranteed by the United States and do not constitute a debt or obligation of the United States. All of the benefits and burdens incident to the Management and Liquidating Functions inure solely to the Secretary of the Treasury.

[36 FR 24699, Dec. 22, 1971]

PART 370—MORTGAGE ACTIVITIES

Sec.
370.1 Original portfolio.
370.3 Purchases.
370.5 Servicing.
370.7 Sales.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

SOURCE: 36 FR 24699, Dec. 22, 1971, unless otherwise noted.

§ 370.1 Original portfolio.

The Management and Liquidating Functions began on November 1, 1954, with the portfolio of mortgages and outstanding contracts owned by the Federal National Mortgage Association as of October 31, 1954.

§ 370.3 Purchases.

The Association purchases obligations offered to it by the Secretary of Housing and Urban Development and mortgages of residential property offered to it by any Federal instrumentality.

§ 370.5 Servicing.

Home mortgages owned by the Association under the Management and Liquidating Functions are serviced as described in Part 350 of this chapter.

§ 370.7 Sales.

Sales of mortgages owned under the Management and Liquidating Functions are consummated as described in Part 350 of this chapter.

PART 380—FIDUCIARY ACTIVITIES

Sec.
380.1 General.
380.3 Appropriations.

AUTHORITY: Sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 380.1 General.

The Association is authorized by section 302(c) of the National Housing Act to create, accept, execute, and administer trusts and other fiduciary undertakings appropriate for financing purposes. In relation thereto, it is authorized to acquire and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in section 302(c)(2) of such Act may have a financial interest. Under its fiduciary powers, accounted for under the Management and Liquidating Functions, the Association creates, accepts, and administers trusts consisting of interests in mortgages and obligations, sells to private investors certificates of beneficial interest, or participations, in the mortgages or obligations or in the interest and principal payments derived therefrom, and provides for payment of interest and principal and for retirement of the participations. The Association under the Management and Liquidating Functions, in its ordinary corporate capacity as contrasted to its fiduciary capacity, is expressly authorized to guarantee the participations.

[36 FR 24700, Dec. 22, 1971]

§ 380.3 Appropriations.

There is authority for Congress to appropriate such sums as may be necessary to enable the trustor of any trust (as described in § 380.1) to pay to the Association, as trustee, any insufficiency in aggregate receipts from the obligations subject to the trust to provide for the timely payment by the trustee of all interest or principal on the beneficial interests or participations related to such trust.

[36 FR 24700, Dec. 22, 1971]

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

Subpart A—Pass-Through Type Securities

Sec.
390.1 General.
390.3 Eligible issuers of securities.
390.5 Securities.
390.7 Mortgages.
390.9 Pool administration.
390.11 Fidelity bond coverage.
390.13 Guaranty.
390.15 Default.
390.17 Fees.

Subpart B—Bond-Type Securities

390.21 General.
390.23 Eligible issuers.
390.25 Securities.
390.27 Mortgages.
390.29 Trust arrangements.
390.31 Guaranty.
390.33 Fees.

Subpart C—Non-Level Payment Mortgage-Backed Securities

390.41 General.
390.43 Eligible mortgages.
390.45 Securities.

Subpart D—Marketing and Trading Requirements

390.50 Definitions.
390.51 Suitability of issuer marketing and trading transactions.
390.52 Contract (mark to market) requirements.
390.53 Prudent business practices.
390.54 Failure to comply.

Subpart E—Miscellaneous Provisions

390.60 Audits and reports.
390.61 Applications.

AUTHORITY: Secs. 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1723a(a); sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—Pass-Through Type Securities

SOURCE: 49 FR 23588, June 6, 1984, unless otherwise noted.

§ 390.1 General.

The Association is authorized by section 306(g) of the National Housing Act, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities which are based on and backed by a trust or pool composed of mortgages which are insured by the Federal Housing Administration or the Farmers' Home Ad-

ministration, or insured or guaranteed by the Department of Veterans Affairs. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart is limited to "pass-through" securities, including (a) "straight pass-through" and (b) "modified pass-through" types, and does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the Association's Mortgage-Backed Securities Guides and contracts entered into by the parties. Further information may be obtained from the Government National Mortgage Association, 451 Seventh Street SW., Washington, D.C. 20410.

[49 FR 23588, June 6, 1984, as amended at 54 FR 39525, Sept. 27, 1989]

§ 390.3 Eligible issuers of securities.

(a) A mortgage lender, including an instrumentality of a State or local government, to be eligible to issue and service mortgage-backed securities guaranteed by the Association must—

(1) Be in good standing as a mortgagee approved by the Federal Housing Administration;

(2) Be in good standing as a mortgage servicer approved by the Federal National Mortgage Association (FNMA) or the Association;

(3) Have adequate experience, management capability, and facilities to issue and service mortgage-backed securities, as determined by the Association;

(4) Maintain the applicable minimum net worth prescribed in paragraph (c) of this section; and

(5) Meet the requirements, conditions, and limitations prescribed by the Association in this section or the applicable Association's Mortgage-Backed Securities Guide (GNMA 5500.1—GNMA I Program and GNMA 5500.2—GNMA II Program).

(b) The Association shall not commit to guarantee, or guarantee (pursuant to a commitment or otherwise) any issue of mortgage-backed securities unless the mortgage lender requesting such commitment or guaranty qualifies as an eligible issuer both at the time of commitment approval and at the time of the issuance of the guaranty.

(c) Each eligible issuer shall maintain at all times a net worth in assets acceptable to GNMA of not less than the applicable minimum amount set forth in this paragraph, as follows:

(1) For the issuance of straight pass-through securities, $100,000;

(2) For the issuance of modified pass-through securities based on and backed by mortgages on one-to-four family residences:

(i) With respect to securities issued prior to October 1, 1979, an amount equal to the lesser of:

(A) $250,000; or

(B) $100,000, plus 1 percent of securities outstanding in excess of $5 million.

(ii) With respect to securities issued on or after October 1, 1979, an amount equal to the sum of:

(A) $100,000; plus

(B) 1 percent of securities outstanding in excess of $5 million but not in excess of $20 million; plus

(C) 0.2 percent of securities outstanding in excess of $20 million;

(3) For the issuance of modified pass-through securities based on and backed by mortgages on manufactured homes:

(i) With respect to securities issued prior to October 1, 1979, $500,000.

(ii) With respect to securities issued on or after October 1, 1979, an amount equal to the sum of:

(A) $500,000; plus

(B) 0.2 percent of securities outstanding in excess of $35 million;

(4) For the issuance of modified pass-through securities based on and backed by mortgages on multifamily projects (both construction and permanent mortgages):

(i) With respect to securities for which the first issue within any pool or project was issued prior to October 1, 1979, an amount equal to the lesser of:

(A) $500,000; or

(B) The sum of 3 percent of the first $5 million of securities outstanding, plus 2 percent of the next $5 million of securities outstanding, plus 1 percent of securities outstanding in excess of

$10 million, but in no event shall such net worth be less than $100,000.

(ii) With respect to securities for which the first issue within any pool or project was issued on or after October 1, 1979, an amount equal to the sum of:

(A) $500,000; plus

(B) 0.2 percent of securities outstanding in excess of $35 million;

(5) For the issuance of more than one type of security on or after October 1, 1979, an amount equal to the sum of:

(i) $500,000; plus

(ii) 0.2 percent of all mortgage-backed securities outstanding in excess of $35 million.

(d)(1) In computing the required amount of net worth for purposes of this section, the term "securities outstanding" means the sum of:

(i) The unpaid principal balances of securities currently in the name of the issuer; plus

(ii) The amount of any outstanding commitments for guaranty issued by the Association, excluding the amount of project security commitments outstanding for the same project; plus

(iii) The amount of any commitments to guarantee currently being requested from the Association, excluding the amount of project security commitments requested in cases where construction security commitments are being requested for the same project.

(2) In calculating required net worth, any securities outstanding that are based on internal reserve pools will be reduced by one-half in the making of such calculations.

(e) A mortgage lender shall not qualify as an eligible issuer at any time in which:

(1) The lending policies of the issuer permit any discrimination based on race, religion, color, national origin, age, or sex of a borrower; or

(2) The issuer is not in compliance with any rules, regulations, or orders issued under Title VI of the Civil Rights Act of 1964; Executive Order 11063, Equal Opportunity in Housing, November 20, 1962; Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967; or Title VII of the Civil Rights Act of 1968; or by the FHA or VA.

(f) A mortgage lender shall qualify as an eligible issuer only so long as it conducts its business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by the Association, and shall maintain its books and records in accordance with generally accepted accounting principles.

(g) In the event that a mortgage lender which has qualified as an eligible issuer should subsequently fail to comply with any of the requirements prescribed in this section, the Association may withhold further commitments to guarantee securities until such time as the Association is satisfied that the mortgage lender has resumed business operations in compliance with such requirements.

§ 390.5 Securities.

(a) *Instruments.* Securities to be issued pursuant to the provisions of this subpart may be of one of the following types, but only one of such types may be issued against any single pool of mortgages: (1) Straight pass-through securities, which provide for the payment by the issuer to the holders of a proportionate share of the proceeds of principal and interest, as collected, on account of a pool of mortgages, less servicing fees and other specified costs approved by the Association; and (2) modified pass-through securities, which provide for such payment, whether or not collected, of both specified principal installments and a fixed rate of interest on the unpaid principal balance, with all prepayments being passed through to the holder. In the case of delinquent mortgages in a pool backing modified pass-through securities, the issuer is required to make advances if necessary to maintain the specified schedule of interest and principal payments to the holders, or at its option, at any time 90 days or more after default of any such mortgage, the issuer may repurchase such mortgage for an amount equal to the unpaid principal balance of the mortgage. Both straight pass-through and modified pass-through securities must specify the dates by which pay-

ments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities must also specify a date on which the entire principal to be collected will have been paid or will be payable.

(b) *Issue amount.* Each issue of guaranteed securities must be in a minimum face amount of $250,000. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in the pool. The association may provide for issuers to submit packages of mortages that may be consolidated, with other packages of similar types of mortgages, into multiple issuer pools.

(c) *Face amount of securities.* The face amount of any security cannot be less thant $25,000.

(d) *Transferability.* Securities are transferable, but the share of the proceeds collected on account of the pool of mortgages is payable only to the registered holder of a security according to the rules established by the Association.

§ 390.7 Mortgages.

Each issue of guaranteed securities must be backed by a separate pool of mortgages which:

(a) Are insured under the National Housing Act or title V of the Housing Act of 1949, or insured or guaranteed under chapter 37 of title 38, United States Code;

(b) Have a date for the first scheduled monthly payment of principal and interest, or a date of purchase from an Association-approved auction, that is no more than 24 months before the issue date of the securities.

(c) Will be replaced by the issuer if found defective by the Association at any time prior to 4 months after the date on which the Association issues its guaranty of the securities; and

(d) Meet such other standards of acceptability as may be prescribed by the Association.

For purposes of this Part, a mortgage on a manufactured home means either a loan for the purchase of a manufactured home unit or a comnbination loan for the purchase of a manufactured home and a developed manufactured home lot in a single transaction.

[49 FR 23588, June 6, 1984, as amended at 51 FR 34465, Sept. 29, 1986; 52 FR 37608, Oct. 9, 1987]

§ 390.9 Pool administration.

The Association will not guarantee securities if the pool arrangement proposed by the issuer does not satisfactorily provide for:

(a) Servicing of the mortgages in the pool;

(b) Segregation of the cash flow from mortgages in the pool from the other assets of the issuer;

(c) Timely payment of principal and interest, in accordance with the terms of the guaranteed securities;

(d) Notification to the Association of an impending default, on the part of the issuer, in adequate time for the Association to make timely payments on the securities; and

(e) Delivery to a designated custodial agent satisfactory to the Association of the mortgage notes or other evidences of indebtedness secured by the mortgages in the pool and protection of the Association's interest in all assets in the pool as collateral for its guaranty.

§ 390.11 Fidelity bond coverage.

The issuer shall maintain, for the benefit of the Association, fidelity bond coverage, acceptable to the Association, that assures the faithful performance of the fiduciary responsibilities of the issuer.

§ 390.13 Guaranty.

With respect to straight pass-through securities, the Association guarantees the timely payment to the security holder of the proceeds of principal and interest, as collected, as undertaken in the Association's guaranty appearing on the face of the security. With respect to modified pass-through securities, the Association guarantees the timely payment whether or not collected, of the fixed rate of interest on the outstanding balance and the specified principal installments, as undertaken in the Association's guaranty appearing on the face of the security. The Association's

guaranty is backed by the full faith and credit of the United States.

§ 390.15 Default.

(a) As to straight pass-through securities, any failure or inability of the issuer to make payment as due to the holders of the securities from the proceeds from the pool of mortgages which have been collected, or any failure to make collections under reasonable and accepted standards of mortgage servicing, shall constitute a default of the issuer. As to modified pass-through securities, any failure or inability of the issuer to make fixed or other payments as due as well as such other failures as may be identified by the Association and included in the applicable contractual agreement, shall be deemed such a default.

(b) Upon any default by the issuer and payment under its guaranty by the Association, or any failure of the issuer to comply with the terms of the applicable contractual agreement, the Association may institute a claim against the issuer's fidelity bond, or may, pursuant to section 306(g) of the National Housing Act, extinguish all the right, title, or other interest of the issuer in the pooled mortgages, by letter directed to the issuer stating the facts incident to such failure and making the mortgages the absolute property of the Association, subject only to unsatisfied rights therein of the holders of the securities, or the Association may do both. However, when an issuer has failed to comply with the Association's requirements for pool administration or other requirements unrelated to payment to securities holders, net worth or business status, the Association also may bring proceedings to default such issuer. The proceedings will include serving the issuer, by hand delivery or by certified or registered mail, with a written notice stating the facts incident to such failure and setting forth such affirmative requirements as the Association may consider necessary to correct such failure to be in compliance. Steps to correct or otherwise remedy such failure shall be carried out in accordance with such procedures as may be set forth in the applicable contractual agreement.

§ 390.17 Fees.

The Association may impose applica tion fees, guaranty fees, securities transfer fees, and such other fees as are reasonable in relation to costs, expenses, and risks.

Subpart B—Bond-Type Securities

SOURCE: 36 FR 27401, Dec. 22, 1971, unless otherwise noted.

§ 390.21 General.

(a) In addition to the "pass-through" securities dealt with in Subpart A of this part, the Association is authorized by section 306(g) of the National Housing Act, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities of the "bond-type" which are based on and backed by a trust or pool composed of mortgages which are insured by the Federal Housing Administration or the Farmers' Home Administration, or insured or guaranteed by the Department of Veterans Affairs. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States.

(b) Sections 390.21 through 390.35 deal with such "bond-type" securities and do not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the contracts entered into by the parties. Further information may be obtained from the Government National Mortgage Association, 451 Seventh Street SW., Washington, D.C. 20414.

[36 FR 27401, Dec. 22, 1971, as amended at 54 FR 39525, Sept. 27, 1989]

§ 390.23 Eligible issuers.

Any corporation, trust, partnership, or other entity with a net worth in assets acceptable to the Association of $50 million or more, and which has the capability to assemble acceptable and eligible mortgages in sufficient quantity to support required minimum issuances of securities, may be approved for a guaranty by the Associa-

tion. Further, the Association reserves the right to limit the number of issuers in the interest of conducting an orderly market of securities of this type.

§ 390.25 Securities.

(a) *Instruments.* Securities to be issued pursuant to the provisions of this subpart may be in registered or bearer form. Each security shall have terms acceptable to the Association and shall specify its principal amount, the interest rate, and the maturity date, and the securities may include call provisions and other characteristics depending on current market conditions.

(b) *Issue amount.* Until further authorization is given, each issue of guaranteed securities must be in a minimum face amount of $100 million, and no single maturity of an issue may be in face amount less than $100 million unless the total issue exceeds $200 million. The total of the outstanding principal balances of the mortgages upon which any issue is originally based and backed must be at least equal to 100 percent of the face amount of the issue of guaranteed securities. Such ration as may be required by the governing trust arrangements, between mortgages and other pooled assets and securities outstanding at any one time, shall be maintained, subject to adjustment with the approval of the Association in accord with such trust arrangements.

(c) *Face amount of securities.* The face amount of any security cannot be less than $25,000.

(d) *Transferability.* Securities are transferable but, if registered, are transferable, as to the Association and the issuer, only on the books of a fiscal agent as shall be agreed upon by the Association and the issuer.

(e) *Treasury approval.* Issues of $100 million or larger will be subject to approval of the Secretary of the Treasury.

§ 390.27 Mortgages.

Guaranteed securities issued under these provisions must be based on and backed by mortgages pooled under trust arrangements satisfactory to the Association. Such mortgages must:

(a) Be insured under the National Housing Act or title V of the Housing Act of 1949, or insured or guaranteed under the Servicemen's Readjustment Act of 1944 or Chapter 37 of Title 38, United States Code.

(b) Have a date for the first scheduled monthly payment of principal and interest that is no more than 24 months before the issue date of the securities.

(c) Meet such other standards of acceptability and eligibility as may be prescribed by the Association from time to time for the issue of mortgage-backed securities of the bond type. But with respect to any particular issue of securities, the related mortgages shall meet only such standards as may be in effect or imposed at the time of the issuance of the related commitment to guarantee.

[36 FR 27401, Dec. 22, 1971, as amended at 51 FR 34465, Sept. 29, 1986; 52 FR 37608, Oct. 9, 1987]

§ 390.29 Trust arrangements.

(a) The pool of mortgages, together with all proceeds thereof and all other assets backing each issue of "bond-type" securities, shall be held and administered by a corporate trustee which is subject to Federal or State regulation and which is acceptable to the Association. The issuer of the securities may qualify as trustee:

(b) The trust agreement which will be executed by the issuer, the trustee and the Association and which may be reopened subject to the approval of the Association, will provide for:

(1) The issuance of the securities, including the size or other ceilings of the issuance or issuances, the nature and provisions of the securities, the principles and methods of sale and distribution, and other material matters pertaining to issuance;

(2) Conveyance of the pooled mortgages to the trustee, in trust, to provide the base and backing for the securities and otherwise for purposes of the trust arrangements, and custody of mortgage documents;

(3) Administration of the trust, to include servicing and retirement of the securities, and servicing of the mor-

tages through their payment or other liquidation;

(4) Principles and methods with respect to reporting requirements, the handling of losses realized from the pooled mortgages, defaults by the issuer, and other appropriate matters;

(5) Timely payment of principal and interest in accord with the terms of securities issued;

(6) Segregation of the cash and other assets flowing or resulting from the pooled mortgages;

(7) Reinvestment of accumulations of proceeds from the pooled mortgages and other assets to the extent necessary to provide adequately for the payment of securities;

(8) Notification to the Association of any impending default of any payment of the securities, in order that the Association may make timely payments thereon;

(9) It is expected that the trustee and issuer or issuers, together of separately, may contract out, consistent with customary and accepted practices, some or all of the responsibilities with respect to all the foregoing.

§ 390.31 Guaranty.

With respect to bond-type securities, the Association will guarantee the timely payment of principal of and interest on such securities, subject to the terms and conditions thereof. The agreements and contracts among the parties will provide upon default of the issuer for the right of the Association, pursuant to section 306(g) of the National Housing Act, to take title to the mortgages and other assets that are subject to the trust arrangements, and to proceed against other assets of the issuer to the extent necessary to satisfy its own claims and the rights of the holders of securities then outstanding. Such action by the Association shall be taken subject to an accounting to the issuer.

§ 390.33 Fees.

The Association may impose application and guaranty fees, which may vary with relation to the size or risk of the guaranty transaction undertaken.

Subpart C—Non-Level Payment Mortgage-Backed Securities

§ 390.41 General.

This Subpart provides for the guaranty by the Association of timely payment of principal and interest on modified pass-through securities based on and backed by eligible non-level payment mortgages, which mortgages provide for non-level monthly installments. The Association is authorized by section 306(g) of the National Housing Act to make such guarantees. Issuance of securities under this Subpart is subject to the provisions that follow, to the further provisions contained in the applicable Mortgage-Backed Securities Guide (GNMA 5500.1 or GNMA 5500.2), as it shall exist and be amended or supplemented from time to time, and to the contracts entered into by the participating parties. Requirements for Eligible Issuers, Pool Administration, Guaranty, Default and Fees shall be the same as specified in Subpart A for modified pass-through securities.

[49 FR 23590, June 6, 1984]

§ 390.43 Eligible Mortgages.

Each issue of guaranteed securities shall be based on and backed by a pool of a single type of mortgage characterized by non-level monthly payments. The mortgages must:

(a) Provide for changes in monthly installments for reasons including but not limited to: (1) Changes in the interest rate; (2) deferred payments of principal or interest; (3) accelerated repayment of principal; or (4) changes in the remaining principal balance;

(b) Be insured under the National Housing Act or guaranteed under Chapter 37 of Title 38, United States Code; and

(c) Have a date for the first scheduled monthly payment of principal (which may be negative) and interest, or a date of purchase from an Association-approved auction, that is no more than 24 months before the issue date of the securities.

[49 FR 23590, June 6, 1984, as amended at 51 FR 34465, Sept. 29, 1986; 52 FR 37668, Oct. 9, 1987]

§ 390.45 Securities.

(a) *Instruments.* Non-level payment mortgage backed securities shall be identified according to the characteristics of the amortization schedules of the underlying mortgages and shall include, but not be limited to: Graduated Payment Mortgage Backed Securities; Growing Equity Mortgage Backed Securities; and Adjustable Payment Mortgage Backed Securities, which in turn shall include but not be limited to securities based on and backed by adjustable rate mortgages. The securities shall be issued in the form of modified pass-through type securities, which shall provide that each monthly installment payable to the holders shall consist of:

(1) The interest due monthly on the securities computed as one-twelfth ($\frac{1}{12}$) of the applicable annual rate multiplied by the unpaid principal balance of the securities at the end of the prior month. (The amount of interest actually paid may be less than the amount accrued to the extent scheduled principal payments are negative.), and (2) the scheduled recoveries of principal (which may be negative) due monthly on the pooled mortgages and apportioned to the holders by reason of the base and backing of these securities, such amounts of principal and interest to be remitted to the holders whether or not funds sufficient to pay an installment are collected by the issuer, together with (3) any apportioned prepayments or other unscheduled recoveries of principal on the pooled mortgages. Unscheduled recoveries of principal shall include amounts which an issuer must pay from its own funds to provide the holders with any principal that remains unrecovered after receipt of a final insurance claim settlement or other liquidation proceeds. At any time 90 days or more after default of any pooled mortgage the issuer may, at its option, repurchase such mortgage from the pool for an amount equal to the unpaid principal balance of the mortgage. The securities shall specify the maturity dates and dates upon which payments are to be made to the holders.

(b) *Issue amount.* Each issue of securities shall be in an amount no less than $250,000. The total face amount of any issue of securities shall not exceed the aggregate scheduled unpaid principal balances of the mortgages in the pool as of the issue date of the securities. The Association may provide for issuers to submit packages of mortgages that may be consolidated, with other packages of similar types of mortgages, into multiple issuer pools. Further, the Association and issuers reserve the right to consolidate pools of mortgages backing the securities with other pools backed by similar mortgages bearing the same interest rate and maturity dates in accordance with such procedures as may be established in the applicable Mortgage Backed Securities Guide.

(c) *Face amount.* The original face amount of any security shall not be less than $25,000.

(d) *Transferability.* The securities are freely transferable and assignable, but only on the books and records of the Association or of the issuer.

[49 FR 23590, June 6, 1984, as amended at 51 FR 28553, Aug. 8, 1985]

Subpart D—Marketing and Trading Requirements

SOURCE: 45 FR 40558, June 13, 1980. Redesignated at 48 FR 3589, Jan. 26, 1983, and at 49 FR 23591, June 6, 1984, unless otherwise noted.

§ 390.50 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Delayed delivery contract" means a contract for the purchase or sale of one or more securities to be delivered at an agreed future settlement date, which is more than thirty calendar days after the contract's trade date. The term includes both contracts which contemplate mandatory delivery and acceptance of the securities (including agreements to sell/purchase and subsequently repurchase/resell) and option contracts which give one party the right but not the obligation to deliver securities to, or demand delivery of securities from, the other party. The term does not include futures contracts or options contracts

utilized in a contract market, or listed on an exchange, designated as such by, and in compliance with the requirements of, the Commodities Futures Trading Commission or the Securities and Exchange Commission. A delay delivery contract is "open" if it has not been fulfilled by the delivery of securities or, in the case of an option, it has not been but still may be exercised.

(b) "Mark to market" means the act of determining the market price of securities purchased or sold pursuant to an open delayed delivery contract and the further act, by the party which has an unrealized loss (when the market price is measured against the contract's price), of depositing collateral for the benefit of the contract's other party.

(c) "Regulated transaction" means the purchase or sale of securities by an issuer pursuant to a delayed delivery contract, except that the term does not include:

(1) A sale of securities where (i) the issuer holds a valid outstanding Commitment to Guaranty Mortgage-Backed Securities (which is not applied in connection with another transaction) issued by the Association in an amount at least equal to the face amount of the securities sold, and (ii) the settlement date under the contract is no later than the last day of the calendar month in which the 150th day after the contract's trade date falls;

(2) A sale of securities guaranteed by the Association and based on construction loans (construction loan securities) or project loans (project loan securities);

(3) A sale or purchase of securities pursuant to a contract which does not obligate the issuer to actually sell/purchase securities; that is, a put or call transaction in which the issuer has the option to perform; or

(4) A purchase (or sale) of mortgage participation certificates directly from (or to) the Federal Home Loan Mortgage Corporation.

(d) "Securities" means any security guaranteed by the Association pursuant to section 306(g) of the National Housing Act and mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation.

(e) "Settlement date" means the date agreed upon by the parties to a regulated transaction for the full and final payment of funds and delivery of securities or the date on which the parties make full and final payment of funds and delivery of securities.

(f) "Trade date" means the date on which the parties to a regulated transaction agree to the purchase or sale of securities, regardless of the date on which the securities are to be delivered or the right to deliver them may be exercised.

§ 390.51 Suitability of issuer marketing and trading transactions.

Issuers shall enter into agreements to purchase or sell securities only to the extent the transactions are suitable for the issuer in view of its financial capacity and existing contractual obligations, including contracts with the Association. An issuer shall not enter into any agreement to purchase or sell securities if the result of the transaction could materially jeopardize the issuer's ability to continue to satisfy the basic net worth requirements set forth in § 390.3 or its ability to continue to administer its outstanding securities.

§ 390.52 Contract (mark to market) requirements.

(a) An issuer may engage in a regulated transaction only if it undertakes the transaction in accordance with an executed delayed delivery contract which requires, at a minimum, each of the following (except paragraph (a)(4) of this section which the parties at their option may agree to require):

(1) Both parties shall agree to mark to market at least once each week from the trade date until the settlement date.

(2) A party which deposits collateral pursuant to its obligation to mark to market shall make the deposit with an independent Federally regulated financial institution in the form of:

(i) Cash,

(ii) Unmatured, negotiable debt obligations issued or guaranteed by the United States Government or an agency or instrumentality thereof, or

(iii) Irrevocable, unconditional letters of credit in a form acceptable to GNMA, and issued by a banking institution supervised by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Federal Reserve Board. The institution at which the collateral is deposited shall be unrelated to, not affiliated with, and in no way controlled by a party to the regulated transaction.

(3) The collateral maintained with the independent financial institution shall be increased or adjusted at least weekly to the extent necessary to assure a deposit, by the party which has a net unrealized loss with respect to all its regulated transactions with the same contra-party, with a value equal to one hundred percent of the net unrealized loss.

(4) The amount of collateral required by paragraph (a)(3) of this section may be adjusted downward to the extent the unrealized loss associated with an issuer's purchase of securities in a regulated transaction is offset by an unrealized gain with respect to a sale (to the same contra-party and on substantially the same terms) of securities, which sale is not a regulated transaction because of the exclusion provided in § 390.50(c)(1).

(5) Both parties shall agree to the method by which the market price of securities will be determined.

(6) Each party shall maintain complete and accurate records of each regulated transaction, including its mark to market calculations and its deposits and adjustments of collateral made with respect to each delayed delivery contract under which it is obligated to make deposits.

(7) The same institution may be the depository for collateral deposited by a party under different delayed delivery contracts. The collateral deposited by a party under one delayed delivery contract may be commingled with collateral deposited by that party under other delayed delivery contracts with the same contra-party.

(b) An issuer may satisfy paragraph (a) of this section by carrying out a regulated transaction through clearing and settlement procedures established by a central clearing facility, which procedures substantially conform with the requirements of this section, as determined by the Association.

§ 390.53 Prudent business practices.

Issuers shall exercise sound and prudent business practices in the marketing and trading of securities, as follows:

(a) Procedures must be established to provide the basis for determining the financial integrity of the securities dealers, brokers, and investors with which they conduct business. The procedures must include standards for, and steps to be taken in, determining the financial capacity and business reputation of the dealer, broker, or investor.

(b) Internal management controls must be established to assure coordination of delayed delivery contract activities, controls on the issuer's market positions, and integrity of staff.

§ 390.54 Failure to comply.

Failure by an issuer to comply with the requirements of this subpart is sufficient basis for the Association, at its option, to withhold from the issuer further commitments to guaranty mortgage-backed securities.

Subpart E—Miscellaneous Provisions

§ 390.60 Audits and reports.

The Association may at any reasonable time audit the books and examine the records of any issuer, mortgage servicer, trustee, or agent or other person bearing on compliance with the requirements of the Mortgage-Backed Securities Program, and the Association may require reasonable and necessary reports from such persons.

[45 FR 40559, June 13, 1980. Redesignated at 48 FR 3589, Jan. 26, 1983, and 49 FR 23591, June 6, 1984]

§ 390.61 Applications.

Applications for guaranty should be submitted to the Association's home office located at 451 Seventh Street, SW., Washington, D.C. 20410.

[45 FR 40559, June 13, 1980. Redesignated at 48 FR 3589, Jan. 26, 1983, and 49 FR 23591, June 6, 1984]

PARTS 391—499 [RESERVED]

CHAPTER IV—[RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Table of CFR Titles and Chapters
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Redesignation Tables
Distribution Table
List of CFR Sections Affected

Material Approved for Incorporation by Reference

(Revised as of April 2, 1990)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

24 CFR SUBTITLE B, CHAPTER II (PARTS 200 TO 299)
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF ASSISTANT SECRETARY FOR HOUSING–FEDERAL HOUSING COMMISSIONER

24 CFR

(The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS). The MPS are in turn incorporated by reference in 24 CFR Part 200, Subpart S. The MPS may be purchased from the U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection at the HUD Program Information Center, Room 1104, 451 Seventh St., SW, Washington, DC, at each HUD Regional, Area, and Service Office, and at the Office of the Federal Register, 1100 L St., NW, Washington, DC. The individual standards referenced in the MPS are available at the addresses contained in the following table. They are available for public inspection at HUD Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 6170, 451 Seventh St., SW, Washington, DC, each Service and Area Office, and the Office of the Federal Register.)

Minimum Property Standards, One and Two Family Dwellings, 1982 Edition

Air Conditioning Contractors of America
1228 17th St., NW., Washington, DC 20036

Manual J–1981 Load calculation for Residential Winter and Summer Air Conditioning. — Part 200, Subpart S

American National Standards Institute
1430 Broadway, New York, NY 10018

ANSI A58.1–82 Minimum Design Loads in Buildings and Other Structures. — Part 200, Subpart S

American Society for Testing and Materials
1916 Race St., Philadelphia, PA 19103

ASTM C 62–83a Building Brick (Solid Masonry Units Made From Clay or Shale). — Part 200, Subpart S

American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc.
345 E. 47th St., New York, NY 10017

ASHRAE 90A–80 Energy Conservation in New Building Design ..... Part 200, Subpart S
ASHRAE Handbook of Fundamentals–1985 ..... Part 200, Subpart S

Council of American Building Officials
5205 Leesburg Pike, Falls Church, Virginia 22041

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	24 CFR
CABO One and Two Family Dwelling Code, 1983 edition with the 1984 and 1985 Amendments, excluding Chapter 1—Administrative; Part VI—Electrical; and Part VII—Energy Conservation, but including Appendices A and B of the Code.	Part 200, Subpart S
Hydronics Institute	
Yeon Bldg., Portland, OR 97204	
Guide H–21 Heat Loss Calculation Guide–1984	Part 200, Subpart S
National Fire Protection Association	
Batterymarch Park, Quincy, MA 02269	
NFPA 70A–84 National Electric Code for One and Two Family Dwellings, including appendices.	Part 200, Subpart S

Minimum Property Standards for Multifamily Dwellings

Aluminum Association	
818 Connecticut Avenue, NW, Washington, DC 20006	
AA–ASM 35–80 Specifications for Aluminum Sheet Metal Work in Building Construction.	Part 200, Appendix A
American Concrete Institute	
P.O. Box 19150, Redford Station, Detroit, MI 48219	
ACI 211.1–81 Standard Practice for Selecting Proportions for Normal, Heavyweight, and Mass Concrete.	Part 200, Appendix A
ACI 211.2–81 Standard Practice for Selecting Proportions for Structural Lightweight Concrete.	Part 200, Appendix A
ACI 213 R–79 Guide for Structural Lightweight Concrete	Part 200, Appendix A
ACI 214–77 Recommended Practice for Evaluation of Compressive Test Results of Field Concrete.	Part 200, Appendix A
ACI 301–72 (R81) Specifications for Structural Concrete for Buildings.	Part 200, Appendix A
ACI 302.1R–80 Guide for Concrete Floor and Slab Construction	Part 200, Appendix A
ACI 304–73 (R78) Recommended Practice for Measuring, Mixing, Transporting and Placing Concrete.	Part 200, Appendix A
ACI 305 R–77 Hot Weather Concreting	Part 200, Appendix A
ACI 306 R–78 Cold Weather Concreting	Part 200, Appendix A
ACI 311.4R–80 Guide for Concrete Inspection	Part 200, Appendix A
ACI 315 R–80 Guide for Detailing of Concrete Reinforcement	Part 200, Appendix A
ACI 318–77 Building Code Requirements for Reinforced Concrete, with 1980 Supplement.	Part 200, Appendix A
ACI 322–72 Structural Plain Concrete	Part 200, Appendix A
ACI 347–78 Recommended Practice for Concrete Formwork	Part 200, Appendix A
ACI 504 R–77 Guide to Joint Sealants for Domestic Structures	Part 200, Appendix A

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	24 CFR
ACI 506–66 (R78) Recommended Practice for Shotcreting	Part 200, Appendix A
ACI 515 R–79 Recommended Practice for the Application of Paint to Concrete Surfaces.	Part 200, Appendix A
ACI 533.1R–69 Quality Standards and Tests for Precast Concrete Wall Panels.	Part 200, Appendix A
ACI 533.2R–69 Selection and Use of Materials for Precast Concrete Wall Panels.	Part 200, Appendix A
ACI 533.3R–70 Fabrication, Handling and Erection of Precast Concrete Wall Panels.	Part 200, Appendix A
American National Standards Institute 1430 Broadway, New York, New York 10018	
ANSI A108.1–76 Installation of Glazed Wall Tile, Ceramic Mosaic Tile, Quarry Tile and Paver Tile with Portland Cement Mortar.	Part 200, Appendix A
ANSI A117.1–80 Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People.	Part 200, Appendix A
ANSI/AHA A135.4–82 Basic Hardboard	Part 200, Appendix A
ANSI A137.1–80 Ceramic Tile	Part 200, Appendix A
ANSI A156.2–76 Locks and Lock Trim	Part 200, Appendix A
ANSI A161.1–80 Construction and Peformance Standards for Kitchen and Vanity Cabinets.	Part 200, Appendix A
ANSI A208.1–79 Mat Formed Wood Particleboard	Part 200, Appendix A
ANSI Z34.1–82 American National Standard for Certification—Third—Party Certification Program.	Part 200, Appendix A
American Society for Testing and Materials 1916 Race Street, Philadelphia, Pennsylvania 19103	
ASTM C 12–81 Installing Vitrified Clay Pipe Lines	Part 200, Appendix A
ASTM C 208–72 (1982) Insulating Board (Cellulosic Fiber), Structural and Decorative.	Part 200, Appendix A
ASTM C 209–72 Insulating Board (Cellulosic Fiber), Structural and Decorative.	Part 200, Appendix A
ASTM C 220–77 Flat Asbestos-Cement Sheets	Part 200, Appendix A
ASTM C 221–81 Corrugated Asbestos-Cement Sheets	Part 200, Appendix A
ASTM C 223–78 Asbestos-Cement Siding	Part 200, Appendix A
ASTM C 509–79 Cellular Elastomeric Preformed Gasket and Sealing Material.	Part 200, Appendix A
ASTM C 516–80 Vermiculite Loose Fill Thermal Insulation	Part 200, Appendix A
ASTM C 549–81 Perlite Loose Fill Insulation	Part 200, Appendix A
ASTM C 726–81 Mineral Fiber and Mineral Fiber Rigid Cellular Polyurethane Composite Roof Insulation Board.	Part 200, Appendix A

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	24 CFR
ASTM C 754–82 Installation of Steel Framing Members to Receive Screw Attached Gypsum Wallboard, Backing Board or Water Resistant Backing Board.	Part 200, Appendix A
ASTM C 834–76 (1981) Latex Sealing Compounds	Part 200, Appendix A
ASTM C 841–81 Installation of Interior Lathing and Furring	Part 200, Appendix A
ASTM C 842–79 Application of Interior Gypsum Plaster	Part 200, Appendix A
ASTM C 843–76 Application of Gypsum Veneer Plaster	Part 200, Appendix A
ASTM C 844–79 Application of Gypsum Base to Receive Gypsum Veneer Plaster.	Part 200, Appendix A
ASTM C 846–76 Application of Structural Insulating Board (Fiberboard) Sheathing.	Part 200, Appendix A
ASTM C 926–81 Application of Portland Cement Based Plaster	Part 200, Appendix A
ASTM D [illegible]17–78 Wood-Base Fiber and Particle Panel Materials	Part 200, Appendix A
ASTM D 1557–78 Moisture-Unit Weight Relations of Soils, and Soil-Aggregate Mixtures Using 10-lb (4.5 kg) Rammer and 18-in. (457-mm) Drop.	Part 200, Appendix A
ASTM D 2316–75 (1980) Installing Bituminized Fiber Drain and Sewer Pipe.	Part 200, Appendix A
ASTM D 2321–74 (1980) Underground Installation of Flexible Thermoplastic Sewer Pipe.	Part 200, Appendix A
ASTM D 3656–78 Insect Screening and Louver Cloth Woven From Vinyl Coated Glass Fiber Yarn.	Part 200, Appendix A
ASTM D 3679–81a Rigid Polyvinyl Chloride (PVC) Siding	Part 200, Appendix A
ASTM E 72–80 Standard Methods of Conducting Strength Tests of Panels for Building Construction.	Part 200, Appendix A
ASTM E 283–73 Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors.	Part 200, Appendix A
ASTM E 330–79 Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference.	Part 200, Appendix A
ASTM E 331–70 Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference.	Part 200, Appendix A
ASTM E 380–82 Metric Practice	Part 200, Appendix A
American Society of Heating, Refrigerating and Air Conditioning Engineers 345 East 47th Street, New York, New York 10017	
ASHRAE Handbook of Fundamentals—1981	Part 200, Appendix A
ASHRAE Handbook of Applications—1978	Part 200, Appendix A
ASHRAE Handbook of Equipment—1979	Part 200, Appendix A
ASHRAE Handbook of Systems—1980	Part 200, Appendix A
ASHRAE GRP 158–1979 Cooling and Heating Load Calculations Manual.	Part 200, Appendix A

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	24 CFR
American Welding Society 550 NW Le Jeune Road, Miami, Florida 33126	
ANSI/AWS D1.1–82 Structural Welding Code	Part 200, Appendix A
ANSI/AWS D1.4–79 Structural Welding Code—Reinforcing Steel	Part 200, Appendix A
Architectural Aluminum Manufacturers Association 35 East Wacker Drive, Chicago, Illinois 60601	
AAMA 302.9–77 Aluminum Prime Windows (ANSI A134.1)	Part 200, Appendix A
AAMA SG–1–76 Specifications for Dense Rubber-Like Compression Gasket Materials.	Part 200, Appendix A
AAMA 402.9–77 Aluminum Sliding Glass Doors and Frames (ANSI A134.2).	Part 200, Appendix A
AAMA 804.1–76 Ductile Back-Bedding Glazing Tape for Use with Architectural Aluminum.	Part 200, Appendix A
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AAMA 1002.10–83 Aluminum Insulating Storm Products	Part 200, Appendix A
AAMA 1102.7–77 Aluminum Storm Doors and Frames	Part 200, Appendix A
AAMA 1402.3–82 Aluminum Siding	Part 200, Appendix A
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AAMA 1502.6–77 Voluntary Standards and Tests of Residential Insulating Windows and Sliding Glass Doors.	Part 200, Appendix A
AAMA 1502.7–81 Voluntary Test Method for Condensation Resistance of Windows, Doors and Glazed Wall Sections.	Part 200, Appendix A
AAMA 1503.1–80 Thermal Transmittance of Windows, Doors, and Glazed Wall Sections.	Part 200, Appendix A
AAMA 1504–83 Thermal Performance of Residential Windows and Sliding Glass Doors.	Part 200, Appendix A
The Asphalt Institute Asphalt Institute Building, College Park, Maryland 20740	
MS–1–81 Thickness Design-Full-Depth Asphalt Pavement Structures for Highways and Streets.	Part 200, Appendix A
Asphalt Roofing Manufacturers Association 1800 Massachusetts Avenue, NW, Washington, DC 20036	
Residential Asphalt Roofing Manual—1980	Part 200, Appendix A
Carpet and Rug Institute 301 Holiday Avenue, Box 2048, Dalton, Georgia 30720	
Specifiers Guide for Contract Carpet Installations, 1980	Part 200, Appendix A
Council of American Building Officials Suite 201, 5205 Leesburg Pike, Falls Church, Virginia 22041	

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	24 CFR
Model Energy Code—1983 Edition	Part 200, Appendix A

Department of Agriculture
Publications Division, Office of Government Affairs, 14th and Independence Avenue, SW, Washington, DC 20050

Agriculture Handbook No. 72—Wood Handbook—1974	Part 200, Appendix A
Home and Garden Bulletin No. 64—Subterranean Termites—1979	Part 200, Appendix A
Home and Garden Bulletin No. 73—Wood Decay in Houses: How to Prevent and Control It—1977.	Part 200, Appendix A

Department of Commerce
National Bureau of Standards, Washington, DC 20234

NRS SP 330 The International System of Units—1977	Part 200, Appendix A

Department of Defense
Naval Publication and Forms Center, 5801 Taber Road, Philadelphia, PA 19120

Federal Specifications:

L–S–125B Screening, Insect, Non-metallic	Part 200, Appendix A
L–F–001641 (GSA/FSS) Floor Covering, Translucent or Transparent Vinyl Surface with Backing and Amendment 1, 1971.	Part 200, Appendix A
L–F–475A Backed Vinyl Plastic Sheet or Tile	Part 200, Appendix A
L–F–00450A (GSA/FSS) Flooring, Vinyl Plastic	Part 200, Appendix A
DD–G–451D Glass, Float or Plate, Sheet, Figured (Flat, for Glazing, Mirrors and Other Uses).	Part 200, Appendix A
HH–I–515D Insulation Thermal (Loose Fill for Pneumatic or Poured Application) Cellulosic or Wood Fiber.	Part 200, Appendix A
HH–I–521F Insulation Blankets, Thermal (Mineral Fiber, for Ambient Temperatures).	Part 200, Appendix A
HH–I–524C Insulation Board, Thermal (Polystyrene)	Part 200, Appendix A
HH–I–525A Insulation Board, Thermal (Cork)	Part 200, Appendix A
HH–I–530B Insulation Board, Thermal, Unfaced, Polyurethane or Polyisocyanurate.	Part 200, Appendix A
HH–I–551E Insulation Block and Boards, Thermal (Cellular Glass)	Part 200, Appendix A
HH–I–558B Insulation Blocks, Boards, Blankets, Felts Sleeving (Pipe and Tube Covering), and Pipe Fitting Covering, Thermal (Mineral Fiber, Insulation Type).	Part 200, Appendix A
HH–I–1030B Insulation, Thermal (Mineral Fiber, for Pneumatic or Poured Application).	Part 200, Appendix A
HH–I–1972/Gen; 1, 2, 3, 4, 5, & 6 Insulation Board, Thermal, Faced, Polyurethane and Polyisocyanurate.	Part 200, Appendix A
SS–S–346C Siding (Shingles, Clapboards, and Sheets) Asbestos-Cement.	Part 200, Appendix A

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TT-C-598B Caulking Compound, Oil and Resin Base Type (for Masonry and Other Structures).	Part 200, Appendix A
TT-S-227B Sealer Compound; Rubber-Base Two Component (for Caulking, Sealing) and Glazing in Building Construction.	Part 200, Appendix A
TT-S-230A Sealing Compound; Synthetic Rubber Base, Single Component, Chemically Curing for Caulking, Sealing, and Glazing in Building Construction.	Part 200, Appendix A
TT-S-001543A (COM/NBS) Sealing Compound: Silicone Rubber Base (for Caulking, Sealing, and Glazing in Buildings and Other Structures).	Part 200, Appendix A
TT-S-001657A Ceiling Compound: Single Component Butyl Rubber Based Solvent Release Type for Buildings and Other Types of Construction.	Part 200, Appendix A
LLL-I-535B Insulation Board, Thermal, Cellulosic Fiber	Part 200, Appendix A
LLL-F-1238A Floor, Covering Linoleum	Part 200, Appendix A

Department of Housing and Urban Development
451 7th Street, SW, Washington, DC 20410

Handbooks:	
4940.1–10/72 Minimum Property Standards for Semi-private Swimming Pools and Wading Pools.	Part 200, Appendix A
4940.2–8/73 Minimum Design Standards for Community Water Supply.	Part 200, Appendix A
4940.3–11/72 Minimum Design Standards for Community Sewage Systems.	Part 200, Appendix A
4950.1–8/79 Technical Suitability of Products Program, Technical and Processing Procedures.	Part 200, Appendix A
Use of Materials Bulletins:	
17e Concrete Roofing Tile—7/17/74	Part 200, Appendix A
25d Power Driven, Mechanically Driven and Manually Driven Fasteners—9/5/73.	Part 200, Appendix A
38h Grademarking of Lumber—7/31/79	Part 200, Appendix A
44c HUD/FHA Standard for Carpet and Carpet Certification Program—2/22/78 (Plus Addendum 1 & 2).	Part 200, Appendix A
48 Labels of Independent Programs for Certifying Pressure-Treated Lumber and Plywood (PLUS 5 SUPPLEMENTS)—11/15/67.	Part 200, Appendix A
52a Quality Certification and Labelling for Wood Flush Doors—10/7/75.	Part 200, Appendix A
58a Acrylic Plastic Sheets for Glazing—9/2/75	Part 200, Appendix A
60 Field Glued Plywood & Wood Frame Structural Floor Systems—12/9/70.	Part 200, Appendix A
62a Factory-Applied Laminated Roofing Systems Based on Chlorosulfonated Polyethylene (CSPE)—11/16/72.	Part 200, Appendix A
64b Textured Plywood Panel Siding—8/13/75	Part 200, Appendix A

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67 Polycarbonate Plastic Sheets for Glazing—9/3/75	Part 200, Appendix A
69 Self Adhering Vinyl Asbestos Floor Tile—1/6/77	Part 200, Appendix A
70a Particleboard Interior Stair Treads and Certification Program—5/19/82.	Part 200, Appendix A
71 Polystyrene Foam Insulation Sheathing Board—1/10/77	Part 200, Appendix A
72 HUD Standard for Carpet Cushion—2/6/80	Part 200, Appendix A
76 Chlorinated Poly (Vinyl Chloride) CPVC and Polybutylene (PB) Hot and Cold Water Distribution—4/25/78.	Part 200, Appendix A
77a Cast Iron Sanitary Drainage System with Hubless Pipe and Fittings—3/28/80.	Part 200, Appendix A
78 Polyethylene (PE), Acrylonitrile-Butadiene-Styrene (ABS), Poly Vinyl Chloride (PVC) and Polybutylene (PB) Plastic Piping for Domestic Cold Water Service—4/25/78.	Part 200, Appendix A
79a Acrylonitrile-Butadiene-Styrene (ABS) and Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste and Vent Pipe and Fittings—3/7/82.	Part 200, Appendix A
80 Spray Applied Cellulosic Thermal Insulation—10/31/79	Part 200, Appendix A
Commercial Standards:	
CS 138–55 Insect Wire Screening	Part 200, Appendix A
CS 242–62 1¾" Thick Steel Doors and Frames	Part 200, Appendix A
Federal Specifications:	
DD–G–1403B Glass, Plate (Float), Sheet, Figured, and Spandrel (Heat Strengthened and Fully Tempered).	Part 200, Appendix A
HH–I–526C Insulation Board, Thermal (Mineral Fiber)	Part 200, Appendix A
HH–I–529B Insulation Board, Thermal (Mineral Aggregate)	Part 200, Appendix A
HH–I–574B Insulation, Thermal (Perlite)	Part 200, Appendix A
HH–I–585C Insulation, Thermal (Vermiculite)	Part 200, Appendix A
HH–I–1252B Insulation, Thermal Reflective, (Aluminum Foil)	Part 200, Appendix A
Product Standards:	
PS 1–83 Plywood	Part 200, Appendix A
PS 4–66 Standard Stock Light Duty 1⅜ and 1¾-inch Flush-Type Interior Steel Doors and Frames, etc..	Part 200, Appendix A
PS 27–70 Mosaic-Parquet Hardwood Slat Flooring	Part 200, Appendix A
PS 57–73 Cellulosic Fiber Insulation Board	Part 200, Appendix A

Material Approved for Incorporation by Reference

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	24 CFR
PS 60–73 Hardboard Siding	Part 200, Appendix A
Environmental Protection Agency 401 M Street, SW, Washington, DC 20460	
EPA 430/9–74–007 Manual of Individual Water Supply Systems (Reprinted 1975) (PB 258402).	Part 200, Appendix A
Fir and Hemlock Door Association Yeon Building, Portland, Oregon 97204	
FHDA 7–79 Fir and Hemlock Door Association Standard	Part 200, Appendix A
Flat Glass Marketing Association White Lakes Professional Building, 3310 Harrison Street, Topeka, KS 66611	
Glazing Manual—1980	Part 200, Appendix A
Glazing Sealing Systems Manual—1970	Part 200, Appendix A
Hardwood Plywood Manufacturers Association 1825 Michael Faraday Drive, Reston, Virginia 22090	
ANSI/HPMA LHF–1982 Laminated Hardwood Flooring	Part 200, Appendix A
National Academy of Sciences 2101 Constitution Avenue, NW., Washington, DC 20418	
Criteria for Selection and Design of Residential Slabs-on-Ground, Report No. 33, Publication 1571 (1968), Building Research Advisory Board.	Part 200, Appendix A
National Association of Home Builders Research Foundation, 627 Southlawn Lane, Rockville, Maryland 20850	
Insulation Manual for Homes and Apartments—1979	Part 200, Appendix A
National Fire Protection Association Batterymarch Park, Quincy, MA 02269	
NFPA 54–80 National Fuel Gas Code (ANSI Z223.1—1980)	Part 200, Appendix A
NFPA 58–79 Standard for the Storage and Handling of Liquefied Petroleum Gases.	Part 200, Appendix A
National Oak Flooring Manufacturers Association 804 Sterick Building, Memphis, Tennessee 38103	
Official Grading Rules for Oak, Beech, Birch, Hard Maple and Pecan (OFGR/Vol. 1, No. 1/March 1977).	Part 200, Appendix A
Hardwood Flooring Finishing/Refinishing Manual, 1983	Part 200, Appendix A
Hardwood Flooring Installation Manual, 1983	Part 200, Appendix A
National Roofing Contractors Association 8600 Bryn Mawr Avenue, Chicago, Illinois 60631	
NRCA Roofing and Waterproofing Manual, 1981	Part 200, Appendix A

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	24 CFR
National Sash and Door Jobbers Association 20 North Wacker Drive, Chicago, Illinois 60606	
NSDJA 1–79 Interior Pre-Hung Wood Door Units	Part 200, Appendix A
National Terrazzo and Mosaic Association 3166 Des Plaines Avenue, Suite 15, Des Plaines, Il 60018	
NTMA Specifications, Details and Technical Data, 1981	Part 200, Appendix A
National Woodwork Manufacturers Association 400 West Madison Street, Chicago, Illinois 60606	
IS 1–80 Industry Standard for Wood Flush Doors	Part 200, Appendix A
IS 2–80 Industry Standard for Wood Window Units	Part 200, Appendix A
IS 3–70 Industry Standard for Wood Sliding Patio Doors	Part 200, Appendix A
IS 5–73 Industry Standard for Ponderosa Pine Doors	Part 200, Appendix A
Post-tensioning Institute 382 Springfield Avenue, Summit, New Jersey 70901–2782	
Design and Construction of Post-tensioned Slabs-on-Ground—1980	Part 200, Appendix A
Prestressed Concrete Institute 20 North Wacker Drive, Chicago, Illinois 60606	
PCI MNL 116 Manual for Quality Control for Plants and Production of Precast Prestressed Concrete Products—1977.	Part 200, Appendix A
PCI MNL 117 Manual of Quality Control for Plants and Production of Architectural Precast Concrete Products—1977.	Part 200, Appendix A
PCI MNL 121 Manual for Structural Design of Architectural Precast Concrete—1977.	Part 200, Appendix A
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DD-G-451D Glass, Float or Plate, Sheet, Figured (Flat, For Glazing, Mirrors and Other Uses).	Part 200, Subpart S
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QQ-C-576B Copper Flat Products With Slit, Slit and Edgerolled, Sheared, Sawed, or Machined Edges, (Plate, Bar, Sheet, and Strip).	Part 200, Subpart S
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National Terrazzo & Mosaic Association, Inc. Suite 15, 3166 Des Plaines Ave., Des Plaines, IL 60018	
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Redesignation Tables

The following regulations were reorganized and redesignated at 49 FR 6713, Feb. 23, 1984. For the convenience of the user, the following tables show the relationship of the redesignated chapters and sections.

DISTRIBUTION TABLE *

24 CFR old designation (chapter)	24 CFR new designation (chapter)
401 (IV)	245 (II)
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§ 401.1	§ 245.305.
§ 401.2	§ 245.310.
§ 401.3	§ 245.315.
§ 401.4	§ 245.320.
§ 401.5	§ 245.325.
§ 401.6	§ 245.330.
403 (IV)	246 (II).
445 (IV)	510 (V).
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450 (IV)	247 (II).
470 (IV)	Removed.
490 (IV)	598 (V).
491 (IV)	599 (V).
700 (VII)	3700 (XXII).
710 (VII)	3710 (XXII).
720 (VII)	3720 (XXII).
800 (VIII)	No change.
804 (VIII)	904 (IX).
805 (VIII)	905 (IX).
811 (VIII)	No change.
812 (VIII)	812 (VIII) and 912 (IX).
841 (VIII)	941 (IX).
860 (VIII)	960 (IX).
865 (VIII)	965 (IX).
866 (VIII)	966 (IX).
867 (VIII)	967 (IX).
868 (VIII)	968 (IX).
869 (VIII)	969 (IX).
870 (VIII)	970 (IX).
880 (VIII)	No change.
881 (VIII)	No change.
882 (VIII)	No change.
883 (VIII)	No change.
884 (VIII)	No change.
885 (VIII)	No change.
886 (VIII)	No change.
888 (VIII)	No change.
889 (VIII)	No change.
890 (VIII)	990 (IX).
891 (VIII)	791 (VII).
899 (VIII)	799 (VII).
	899 (VIII) and 999 (IX).

* Each new part will contain a parallel numbering system to the redesignated part, unless specific section designations are indicated above.

DERIVATION TABLE

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599 (V)	491 (IV).
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812 (VIII)	Same.
860 (VIII)	Same.
861 (VIII)	Same.
862 (VIII)	Same.
863 (VIII)	Same.
864 (VIII)	Same.
865 (VIII)	Same.
866 (VIII)	Same.
868 (VIII)	Same.
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960 (IX)	860 (VIII).
965 (IX)	865 (VIII).
966 (IX)	866 (VIII).
967 (IX)	867 (VIII).
968 (IX)	868 (VIII).
969 (IX)	869 (VIII).
970 (IX)	870 (VIII).
990 (IX)	890 (VIII).
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3710 (XXII)	710 (VII).
3720 (XXII)	720 (VII).

Distribution Table

The following regulations were revised at 50 FR 25924, June 24, 1985. For the convenience of the user, the following table shows the restructuring of the text of Part 255 to conform to the organization of Part 251.

RESTRUCTING OF TEXT OF PART 255 TO CONFORM TO ORGANIZATION OF PART 251

New Part 255—Final Rule, Section No.	Heading	Old Part 255—Interim Rule, Section No.
	Subpart A—General Provisions	
255.1	Purpose and scope	255.1–255.6(a)
255.2	Coinsurance contract	255.8(e)
255.3	Definitions	255.8, 255.229(c)
255.4	Effect of amendments	255.429
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255.102	Review and approval as Coinsuring lender.	255.102
255.103	Duration of approval	255.103
255.104	Withdrawal of approval	255.104–255.105
255.105	Delegation of servicing	255.106(a)
255.106	Assignment and participation in coinsured mortgages.	255.408
255.107	Reinsurance	255.106(b)
255.108	Pledging and other security arrangements.	
	Subpart C—Program Requirements	
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255.202	Eligible Mortgagor	255.223(a)
255.203	Maximum mortgage limitations.	255.211
255.204	Maximum interest rate	255.214
255.205	Term of the Mortgage	255.212
255.206	Lender's fees and premiums.	255.202, 255.402(b)
255.207	Coinsurance of Mortgages in lender's portfolio.	255.208
255.208	Nondiscrimination in housing and employment.	255.224–255.225
255.209	Labor standards and prevailing wage requirements.	255.225a
	Subpart D—Processing and Commitment	
255.301	Processing responsibilities	255.6(b), (c), 255.201, 255.203

RESTRUCTING OF TEXT OF PART 255 TO CONFORM TO ORGANIZATION OF PART 251—Continued

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255.402	Certificate of actual costs—contents in general.	255.235
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255.404	Lender's review of Mortgage amount.	255.239
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255.601	Requirements applicable to all projects.	
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255.705	Distributions and Residual Receipts.	255.223(b)
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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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